INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

CASE CONCERNING ELETTRONICA SICULA S.p.A. (ELSI)

(UNITED STATES OF AMERICA *v.* ITALY)

VOLUME I
Application; Memorial

COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

AFFAIRE DE L'ELETTRONICA SICULA S.p.A. (ELSI)

(ÉTATS-UNIS D'AMÉRIQUE c. ITALIE)

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ELETTRONICA SICULA S.p.A.
(ELSI)

AFFAIRE
DE L'ELETTRONICA SICULA S.p.A.
(ELSI)

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The case concerning *Elettronica Sicula S.p.A. (ELSI)*, entered on the Court's General List on 6 February 1987 under number 76, was the subject of a Judgment delivered on 20 July 1989 by the Chamber constituted by the Order made by the Court on 2 March 1987 (*Elettronica Sicula S.p.A. (ELSI), Judgment, I.C.J. Reports 1989*, p. 15).

The pleadings and oral arguments in the case are being published in the following order:

Volume I. Application instituting proceedings; Memorial of the United States of America.
Volume II. Counter-Memorial of Italy; Reply of the United States of America; Rejoinder of Italy.
Volume III. Oral Arguments; Documents submitted to the Chamber after the closure of the written proceedings; Correspondence.

In internal references, bold Roman numerals are used to refer to Volumes of this edition; if they are immediately followed by a page reference, this relates to the new pagination of the Volume in question. On the other hand, the page numbers which are preceded or followed by a reference to one of the pleadings only or which appear between square brackets relate to the original pagination of the document in question, which, in general, is not reproduced in the present edition.

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L'affaire de l'*Elettronica Sicula S.p.A. (ELSI)*, inscrite au rôle général de la Cour sous le numéro 76 le 6 février 1987, a fait l'objet d'un arrêt rendu le 20 juillet 1989 par la Chambre constituée par ordonnance de la Cour du 2 mars 1987 (*Elettronica Sicula S.p.A. (ELSI), arrêt, C.I.J. Recueil 1989*, p. 15).

Les pièces de procédure écrite et les plaidoiries relatives à cette affaire sont publiées dans l'ordre suivant:

Volume I. Requête introductive d'instance; mémoire des Etats-Unis d'Amérique.
Volume II. Contre-mémoire de l'Italie; réplique des Etats-Unis d'Amérique; duplique de l'Italie.
Volume III. Procédure orale; documents présentés à la Chambre après la fin de la procédure écrite; correspondance.

S'agissant des renvois, les chiffres romains gras indiquent le volume de la présente édition; s'ils sont immédiatement suivis par une référence de page, cette référence renvoie à la nouvelle pagination du volume concerné. En revanche, les numéros de page qui ne sont précédés ou suivis que de la seule indication d'une pièce de procédure ou qui ont été mis entre crochets visent la pagination originale du document en question, qui, en principe, n'a pas été reproduit dans la présente édition.

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APPLICATION INSTITUTING PROCEEDINGS SUBMITTED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA

REQUÊTE INTRODUCTIVE D'INSTANCE PRÉSENTÉE PAR LE GOUVERNEMENT DES ÉTATS-UNIS D'AMÉRIQUE

1. THE CHARGÉ D'AFFAIRES *AD INTERIM* OF THE UNITED STATES OF AMERICA TO THE NETHERLANDS TO THE DEPUTY-REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

EMBASSY OF THE
UNITED STATES OF AMERICA,
THE HAGUE.

February 6, 1987.

On behalf of the Government of the United States of America, and in accordance with Article 40, paragraph 1, of the Statute of the Court, I have the honor to notify the Court that the United States wishes to initiate proceedings against the Republic of Italy. The United States requests that this Court determine whether Italy has violated the Treaty of Friendship, Commerce and Navigation between the United States and the Republic of Italy and the supplementary agreement to that treaty, through Italy's actions with respect to an Italian company wholly owned by two United States corporations, and, if so, the amount of compensation due. The facts and contentions at issue in this proceeding are detailed in the application attached hereto.

The Government of the United States of America hereby requests, pursuant to Article 26, paragraph 3, of the Statute of the Court, that a chamber be formed composed of five judges to hear and determine this case. On the understanding that the Government of Italy agrees with this request, we will be happy to arrange for consultation with the President of the Court pursuant to Article 17, paragraph 2, of the Rules of Court, so that the President may ascertain the views of the parties regarding the composition of the chamber.

In accordance with Article 40 of the Rules of Court, the Government of the United States of America wishes to inform the Court that its agent will be the Legal Adviser of the United States Department of State, The Honorable Abraham D. Sofaer.

The address for service of the Agent for the United States of America is: Embassy of the United States of America to the Netherlands, Lange Voorhout 102, 2514 EJ The Hague.

(Signed) John P. HEIMANN.

II. APPLICATION INSTITUTING PROCEEDINGS

I have the honor to refer to Article 36 (1) of the Statute of the Court and Article XXVI of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic of 1948. Under the jurisdiction thereby conferred upon the Court, I hereby submit, in accordance with Article 40 (1) of the Statute and Article 38 of the Rules of Court, this Application instituting proceedings in the name of the Government of the United States of America against the Government of the Republic of Italy in the following case.

I. Statement of Facts

This dispute arises from the requisition of the Government of Italy of the plant and related assets of Elettronica Sicula S.p.A. ("ELSI"), an Italian company which was 100 percent owned by two United States corporations, Raytheon Company ("Raytheon") and Machlett Laboratories, Inc. ("Machlett"). This requisition was intended to, and did in fact, prevent Raytheon and Machlett from proceeding with their decision to conduct an orderly liquidation of ELSI, which caused significant financial injury to Raytheon. As a result of the requisition, it was necessary for ELSI to file a petition in bankruptcy. ELSI's plant and related goods were then acquired by a subsidiary of the Italian government-owned conglomerate, Istituto per la Ricostruzione Industriale ("IRI"), at substantially less than fair market value.

In 1956, Raytheon, a United States electronics manufacturer incorporated in the state of Delaware, became a minority shareholder in ELSI, at that time a relatively new Italian company operating in Palermo, Sicily. Due to ELSI's requirements for additional capital to which ELSI's Italian shareholders did not subscribe, Raytheon increased its ownership interest in ELSI during the next 12 years, ultimately acquiring more than 99 percent of the shares. Machlett, a United States company incorporated in the state of Connecticut, purchased the remainder in 1967.

By 1967, with the financial and technical assistance of Raytheon and Machlett, ELSI had become an established manufacturer of sophisticated electronics equipment, including microwave, x-ray, and cathode ray tubes. ELSI had a large, fully equipped plant in Palermo, a skilled work force of almost 900 employees, a reputation for quality products, and a significant volume of sales and export earnings. ELSI had not yet become profitable, however, and continued to accumulate losses. Raytheon had made repeated capital contributions to ELSI, without receiving any return on its investment.

In 1967, Raytheon decided to launch a major and final effort to make ELSI profitable. As part of this effort, Raytheon brought in management, financial and technical experts comprehensively to review and upgrade ELSI's plant and operations; it also made a further contribution of working capital to sustain their efforts. In Raytheon's view, however, it was more critical to ELSI's future financial well-being to develop new products and markets for ELSI, and to secure ELSI's place in the Italian electronics industry by finding a suitable Italian company as co-owner of ELSI. Senior Raytheon and ELSI officers accordingly made extensive efforts to achieve these objectives, developing detailed plans for new products and markets and pursuing the possibilities of public and private participation and support.

In view of Italy's strong official policy of supporting business development in Sicily, Raytheon and ELSI officers held numerous discussions in 1967 and 1968 with Italian officials, seeking cooperation in maintaining ELSI's operations. They explained that, if ELSI could not be made profitable, they would have no alternative but to close the plant. The Sicilian Government industrial development agency was very interested in becoming an investor in ELSI. Similarly, other Italian and Sicilian Government officials expressed a strong interest in ELSI's survival and gave repeated assurances of the availability of incentives and other support.

In the end, however, such support was not provided; nor was Raytheon able, through its own extensive efforts, to make ELSI profitable. Consequently, in March 1968, upon the recommendation of the Board of Directors, ELSI's shareholders voted to close the plant and liquidate the company. By so doing, ELSI's creditors could be satisfied and ELSI's shareholders would forestall further losses. The orderly liquidation process began on 29 March 1968, with the dismissal of all employees not needed to carry out the liquidation plan.

On 27 and 30 March, the President of Sicily advised ELSI officials that the Government of Italy would, if necessary, requisition ELSI's plant in order to prevent the liquidation. This warning was proven true on 1 April 1968, when the Mayor of Palermo, acting as an official of the Government of Italy, issued an order requisitioning ELSI's plant and equipment for six months (Attachment 3). The order, which noted that the dismissal of employees and plant shutdown had caused public and press criticism of local authorities and that "unforeseeable disturbances of public order could take place", concluded that a requisition was necessary in order "to protect the general economic public interest . . . and public order . . .". No steps were then taken, however, to rehire the employees or to reopen the plant; nor did the public authorities take any steps to protect the plant premises from an occupation by the workers which began shortly thereafter.

ELSI unsuccessfully appealed to the Mayor and other Italian officials to set aside the requisition order. On 19 April 1968, it filed an appeal with the Prefect of Palermo. The next day, 20 April, the President of Sicily threatened that the requisition would be maintained indefinitely unless Raytheon abandoned its liquidation plan. With debts continuing to come due and with no prospect of regaining custody of ELSI's assets and conducting an orderly liquidation in the near future, ELSI's Italian counsel advised the Board of Directors that they were required to file a petition in bankruptcy. A bankruptcy petition was accordingly filed on 26 April 1968 with the Civil and Criminal Tribunal in Palermo, which declared ELSI bankrupt on 16 May.

On 25 July, the Government of Italy made public its intention to take over ELSI's assets through a subsidiary of IRI. In subsequent months, representatives of the Government of Italy and of Raytheon discussed a possible plan for such a take-over, which was to include a general settlement with ELSI's creditors. In November, however, the Government broke off these discussions, announcing that it had decided simply to acquire ELSI's assets through one of IRI's subsidiaries without a creditor settlement. In December, IRI formed a new subsidiary, Industria Elettronica Telecomunicazioni S.p.A. ("ELTEL"), in order to implement this decision.

The bankruptcy judge scheduled three auctions, in January, March, and May of 1969, at which ELSI's plant and other assets could be purchased as a single unit, at a minimum set price. Despite the announced intention of the Government of Italy to take over ELSI, ELTEL did not bid at these auctions. Nor were there other bidders; the planned government take-over of the plant had been publicized and, by the time of the second auction, was well on the road to completion. The terms of the auction, moreover, excluded those whom Raytheon had earlier identified as the most likely purchasers — foreign companies interested in buying individual product lines.

ELTEL was similarly interested in buying only some of ELSI's assets — the plant and related equipment — and not all of the raw material and inventory of the particular products which ELSI had manufactured. Unlike others who might have been interested in acquiring only a portion of ELSI's assets, however, ELTEL was able to negotiate with the bankruptcy authorities its own terms of sale. As a first step, ELTEL leased the plant for a nominal rental, acquired the work in process at a bargain price, and resumed operations at ELSI's plant. Once it was firmly in control of ELSI's assets, ELTEL then offered to purchase the plant and most of the remaining tangible assets for substantially less than their fair market value. The bankruptcy judge accepted this offer and ordered a fourth auction, at which the minimum bid was set at the negotiated price. On 6 July 1969, therefore, ELTEL purchased ELSI's plant and equipment, and certain of its other assets, on the terms finally agreed to.

On 16 August 1969, 16 months after the requisition began but only six weeks after ELTEL had acquired ELSI's assets, the Prefect of Palermo annulled the Mayor's order of requisition, finding that it was not justified by any legal grounds and, moreover, appeared to have been motivated by improper considerations. The delay in issuing this decision deprived ELSI of any effective redress for the requisition, which had caused ELSI to file a petition in bankruptcy and in turn provided the opportunity for ELTEL to manipulate the sales price of ELSI's assets to its benefit.

As a result of these events, Raytheon suffered substantial financial injury. The planned liquidation, had it been allowed to occur, would have generated sufficient funds to satisfy a substantial portion of ELSI's outstanding Italian bank loans which had been guaranteed by Raytheon and of ELSI's debt to Raytheon and a wholly-owned subsidiary for goods and services provided on open account. Because of the bankruptcy, however, Raytheon itself had to pay the guaranteed loans in full and recovered nothing of what was owed on the open accounts. Thus, Raytheon's actual losses were significantly greater than they would have been, had Raytheon been allowed to proceed with the liquidation. In addition, Raytheon incurred substantial expenses in defending against lawsuits brought by Italian government-controlled banks, mitigating the damage to its reputation and credit, and pursuing its claim for redress.

II. The Jurisdiction of the Court

As Members of the United Nations, Italy and the United States are parties to the Statute of the Court, Article 36 (1) of which provides that "The jurisdiction of the Court comprises . . . all matters specifically provided for . . . in treaties and conventions in force". In 1948, the two countries entered into the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic (the "Treaty") (79 *UNTS* 171), which remains in effect, as supplemented by the Agreement Supplementing the Treaty of Friendship, Commerce and Navigation of 1961 (the "Supplement") (404 *UNTS* 326) (Attachment 1). Article XXVI of the Treaty provides that:

> "Any dispute between the High Contracting Parties as to the interpretation or the application of this Treaty, which the High Contracting Parties shall not satisfactorily adjust by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties shall agree to settlement by some other pacific means."

In the circumstances which are described above and which the Government of the United States will set our more fully in its Memorial and subsequent written and oral pleadings, a dispute exists between the Government of Italy and the Government of the United States concerning the interpretation and application of the Treaty and Supplement. The United States contends that Italy's actions with respect to ELSI violated certain of the provisions of the Treaty and Supplement. The Government of Italy has denied this contention. Efforts to resolve the dispute through diplomatic means, commencing in 1969 and continuing into 1985, have been unsuccessful (Attachment 2). There are no other efforts toward settlement pending, nor have the parties agreed to settlement by any other means.

Accordingly, the United States submits that the Court has jurisdiction over this dispute pursuant to Article 36 (1) of the Statute of the Court.

III. THE CONTENTIONS OF THE UNITED STATES

The Government of the United States contends that, by its requisition and subsequent measures against Raytheon's interests in its Italian subsidiary ELSI, and by its discrimination against and failure to afford national treatment to ELSI, the Government of Italy has violated the Treaty and the Supplement. In particular, the United States contends that:

(a) the Government of Italy's requisition of ELSI's assets, which had the object and effect of preventing the orderly liquidation of ELSI and its subsequent conduct violated Articles III and VII of the Treaty and Article I of the Supplement;

(b) the requisition, culminating in the acquisition of ELSI's assets by a government-controlled company, also violated Article V of the Treaty;

(c) the failure of Italian authorities to afford protection of ELSI's plant during the requisition and subsequent period, and the failure of the Prefect promptly to rule on the requisition, violated Article V of the Treaty and Article I of the Supplement; and

(d) the discrimination against ELSI by Italian authorities and failure to afford national treatment violated a number of Articles, including particularly Articles II, III and V of the Treaty and Articles I and V of the Supplement.

IV. JUDGMENT REQUESTED

Accordingly, while reserving the right to supplement and amend this submission as appropriate in the course of further proceedings, the United States requests the Court to adjudge and declare as follows:

(a) that the Government of Italy has violated the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic of 1948, in particular Articles II, III, V and VII of the Treaty, and Articles I and V of the 1961 Supplement; and

(b) that the Government of Italy is responsible to pay compensation to the United States, in an amount to be determined by the Court, as measured by the injuries suffered by United States nationals as a result of these violations, including the additional financial losses which Raytheon suffered in repaying the guaranteed loans and in not recovering amounts due on open accounts, as well as expenses incurred in defending against Italian bank lawsuits, in mitigating the damage to its reputation and credit, and in pursuing its claim for redress.

The Government of the United States has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Embassy of the United States, The Hague, Lange Voorhout 102.

Respectfully submitted,
(Signed) Abraham D. SOFAER,
Agent for the Government of
the United States of America.

Attachment 1

FRIENDSHIP, COMMERCE, AND NAVIGATION

Treaty, protocol, additional protocol, and exchanges of notes signed at Rome February 2, 1948.

Senate advice and consent to ratification June 2, 1948;
Ratified by the President of the United States June 16, 1949;
Ratified by Italy June 18, 1949;
Ratifications exchanged at Rome July 26, 1949;
Entered into force July 26, 1949;
Proclaimed by the President of the United States August 5, 1949;
Supplemented by agreement of September 26, 1951[1].

63 Stat. 2255; Treaties and Other
International Acts Series 1965

TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC

The UNITED STATES OF AMERICA and the ITALIAN REPUBLIC, desirous of strengthening the bond of peace and the traditional ties of friendship between the two countries and of promoting closer intercourse between their respective territories through provisions responsive to the spiritual, cultural, economic and commercial aspirations of their peoples, have resolved to conclude a Treaty of Friendship, Commerce and Navigation based in general upon the principles of national and of most-favored-nation treatment in the unconditional form, and for that purpose have appointed as their Plenipotentiaries,

THE PRESIDENT OF THE UNITED STATES OF AMERICA:

Mr. JAMES CLEMENT DUNN, Ambassador Extraordinary and Plenipotentiary of the United States of America to the Italian Republic,

and,

THE PRESIDENT OF THE ITALIAN REPUBLIC:

The Honorable CARLO SFORZA, Minister Secretary of State for Foreign Affairs,

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following Articles:

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[1] 12 *UST* 131; *TIAS* 4685.

Article I

1. The nationals of either High Contracting Party shall be permitted to enter the territories of the other High Contracting Party, and shall be permitted freely to reside and travel therein.

2. The nationals of either High Contracting Party shall, within the territories of the other High Contracting Party, be permitted, without interference, to exercise, in conformity with the applicable laws and regulations, the following rights and privileges upon terms no less favorable than those now or hereafter accorded to nationals of such other High Contracting Party:

(a) to engage in commercial, manufacturing, processing, financial, scientific, educational, religious, philanthropic and professional activities except the practice of law[1];

(b) to acquire, own, erect or lease, and occupy appropriate buildings, and to lease appropriate lands, for residential, commercial, manufacturing, processing, financial, professional, scientific, educational, religious, philanthropic and mortuary purposes;

(c) to employ agents and employees of their choice regardless of nationality; and

(d) to do anything incidental to or necessary for the enjoyment of any of the foregoing rights and privileges.

3. Moreover, the nationals of either High Contracting Party shall not in any case, with respect to the matters referred to in paragraphs 1 and 2 of this Article, receive treatment less favorable than the treatment which is or may hereafter be accorded to the nationals of any third country.

4. The provisions of paragraph 1 of this Article shall not be construed to preclude the exercise by either High Contracting Party of reasonable surveillance over the movement and sojourn of aliens within its territories or the enforcement of measures for the exclusion or expulsion of aliens for reasons of public order, morals, health or safety.

Article II

1. As used in this Treaty the term "corporations and associations" shall mean corporations, companies, partnerships and other associations, whether or not with limited liability and whether or not for pecuniary profit, which have been or may hereafter be created or organized under the applicable laws and regulations.

2. Corporations and associations created or organized under the applicable laws and regulations within the territories of either High Contracting Party shall be deemed to be corporations and associations of such High Contracting Party and shall have their juridical status recognized within the territories of the other High Contracting Party whether or not they have a permanent establishment, branch or agency therein.

3. Corporations and associations of either High Contracting Party shall, within the territories of the other High Contracting Party, be permitted, without interference, to exercise all the rights and privileges enumerated in paragraph 2 of Article I, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to corporations and associations of such other High Contracting Party. The preceding sentence, and all other provisions of this Treaty according to corporations and associations of the Italian

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[1] See also para. 4 of Protocol, p. 26, *infra*.

Republic rights and privileges upon terms no less favorable than those now or hereafter accorded to corporations and associations of the United States of America, shall be construed as according such rights and privileges, in any state, territory or possession of the United States of America, upon terms no less favorable than those upon which such rights and privileges are or may hereafter be accorded therein to corporations and associations created or organized in other states, territories or possessions of the United States of America.

4. Moreover, corporations and associations of either High Contracting Party shall not in any case, with respect to the matters referred to in this Article, receive treatment less favorable than the treatment which is or may hereafter be accorded to corporations and associations of any third country.

Article III

1. The nationals, corporations and associations of either High Contracting Party shall enjoy, throughout the territories of the other High Contracting Party, rights and privileges with respect to organization of and participation in corporations and associations of such other High Contracting Party, including the enjoyment of rights with respect to promotion and incorporation, the purchase, ownership and sale of shares and, in the case of nationals, the holding of executive and official positions, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to nationals, corporations and associations of any third country. Corporations and associations of either High Contracting Party, organized or participated in by nationals, corporations and associations of the other High Contracting Party pursuant to the rights and privileges enumerated in this paragraph, and controlled by such nationals, corporations and associations, shall be permitted to exercise the functions for which they are created or organized, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to corporations and associations that are similarly organized or participated in, and controlled, by nationals, corporations and associations of any third country.

2. The nationals, corporations and associations of either High Contracting Party shall be permitted, in conformity with the applicable laws and regulations within the territories of the other High Contracting Party, to organize, control and manage corporations and associations of such other High Contracting Party for engaging in commercial, manufacturing, processing, mining, educational, philanthropic, religious and scientific activities. Corporations and associations, controlled by nationals, corporations and associations of either High Contracting Party and created or organized under the applicable laws and regulations within the territories of the other High Contracting Party, shall be permitted to engage in the aforementioned activities therein, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to corporations and associations of such other High Contracting Party controlled by its own nationals, corporations and associations.

Article IV

The nationals, corporations and associations of either High Contracting Party shall be permitted within the territories of the other High Contracting Party to explore for and to exploit mineral resources, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to nationals, corporations and associations of any third country.

Article V

1. The nationals of each High Contracting Party shall receive, within the territories of the other High Contracting Party, the most constant protection and security for their persons and property, and shall enjoy in this respect the full protection and security required by international law. To these ends, persons accused of crime shall be brought to trial promptly, and shall enjoy all the rights and privileges which are or may hereafter be accorded by the applicable laws and regulations; and nationals of either High Contracting Party, while within the custody of the authorities of the other High Contracting Party, shall receive reasonable and humane treatment. In so far as the term "nationals" where used in this paragraph is applicable in relation to property it shall be construed to include corporations and associations.

2. The property of nationals, corporations and associations of either High Contracting Party shall not be taken within the territories of the other High Contracting Party without due process of law and without the prompt payment of just and effective compensation. The recipient of such compensation shall, in conformity with such applicable laws and regulations as are not inconsistent with paragraph 3 of Article XVII of this Treaty, be permitted without interference to withdraw the compensation by obtaining foreign exchange, in the currency of the High Contracting Party of which such recipient is a national, corporation or association, upon the most favorable terms applicable to such currency at the time of the taking of the property, and exempt from any transfer or remittance tax, provided application for such exchange is made within one year after receipt of the compensation to which it relates[1].

3. The nationals, corporations and associations of either High Contracting Party shall within the territories of the other High Contracting Party receive protection and security with respect to the matters enumerated in paragraphs 1 and 2 of this Article, upon compliance with the applicable laws and regulations, no less than the protection and security which is or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party and no less than that which is or may hereafter be accorded to the nationals, corporations and associations of any third country. Moreover, in all matters relating to the taking of privately owned enterprises into public ownership and the placing of such enterprises under public control, enterprises in which nationals, corporations and associations of either High Contracting Party have a substantial interest shall be accorded, within the territories of the other High Contracting Party, treatment no less favorable than that which is or may hereafter be accorded to similar enterprises in which nationals, corporations and associations of such other High Contracting Party have a substantial interest, and no less favorable than that which is or may hereafter be accorded to similar enterprises in which nationals, corporations and associations of any third country have a substantial interest.

4. The nationals, corporations and associations of either High Contracting Party shall enjoy freedom of access to the courts of justice and to administrative tribunals and agencies in the territories of the other High Contracting Party, in all degrees of jurisdiction established by law, both in pursuit and in defense of their rights; shall be at liberty to choose and employ lawyers and representatives in the prosecution and defense of their rights before such courts, tribunals and agencies; and shall be permitted to exercise all these rights and privileges, in

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[1] See also para. 1 of Protocol, p. 26, and paras. 5 and 6 of Additional Protocol, p. 28, *infra*.

conformity with the applicable laws and regulations, upon terms no less favorable than the terms which are or may hereafter be accorded to the nationals, corporations and associations of the other High Contracting Party and no less favorable than are or may hereafter be accorded to the nationals, corporations and associations of any third country. Moreover, corporations and associations of either High Contracting Party which are not engaged in business or in non-profit activities within the territories of the High Contracting Party shall be permitted to exercise the rights and privileges accorded by the preceding sentence without any requirement of registration or domestication.

Article VI

The dwellings, warehouses, factories, shops, and other places of business, and all premises thereto appertaining, of the nationals, corporations and associations of either High Contracting Party, located in the territories of the other High Contracting Party, shall not be subject to unlawful entry or molestation. There shall not be made any visit to, or any search of, any such dwellings, buildings or premises, nor shall any books, papers or accounts therein be examined or inspected, except under conditions and in conformity with procedures no less favorable than the conditions and procedures prescribed for nationals, corporations and associations of such other High Contracting Party under the applicable laws and regulations within the territories thereof. In no case shall the nationals, corporations or associations of either High Contracting Party in the territories of the other High Contracting Party be treated less favorably with respect to the foregoing matters than the nationals, corporations or associations of any third country. Moreover, any visit, search, examination or inspection which may be permissible under the exception stated in this Article shall be made with due regard for, and in such a way as to cause the least possible interference with, the occupants of such dwellings, buildings or premises or the ordinary conduct of any business or other enterprise.

Article VII

1. The nationals, corporations and associations of either High Contracting Party shall be permitted to acquire, own and dispose of immovable property or interests therein within the territories of the other High Contracting Party upon the following terms:

(a) in the case of nationals, corporations and associations of the Italian Republic, the right to acquire, own and dispose of such property and interests shall be dependent upon the laws and regulations which are or may hereafter be in force within the state, territory or possession of the United States of America wherein such property or interests are situated; and

(b) in the case of nationals, corporations and associations of the United States of America, the right to acquire, own and dispose of such property and interests shall be upon terms no less favorable than those which are or may hereafter be accorded by the state, territory or possession of the United States of America in which such national is domiciled, or under the laws of which such corporation or association is created or organized, to nationals, corporations and associations of the Italian Republic; provided that the Italian Republic shall not be obligated to accord to nationals, corporations and associations of the United States of America rights in this connection more extensive than those which are or may hereafter be accorded within the territories of such Republic to nationals, corporations and associations of such Republic.

2. If a national, corporation or association of either High Contracting Party, whether or not resident and whether or not engaged in business or other activities within the territories of the other High Contracting Party, is on account of alienage prevented by the applicable laws and regulations within such territories from succeeding as devisee, or as heir in the case of a national, to immovable property situated therein, or to interests in such property, then such national, corporation or association shall be allowed a term of three years in which to sell or otherwise dispose of such property or interests, this term to be reasonably prolonged if circumstances render it necessary. The transmission or receipt of such property or interests shall be exempt from the payment of any estate, succession, probate or administrative taxes or charges higher than those now or hereafter imposed in like cases of nationals, corporations or associations of the High Contracting Party in whose territory the property is or the interests therein are situated.

3. The nationals of either High Contracting Party shall have full power to dispose of personal property of every kind within the territories of the other High Contracting Party, by testament, donation or otherwise and their heirs, legatees or donees, being persons of whatever nationality or corporations or associations wherever created or organized, whether resident or non-resident and whether or not engaged in business within the territories of the High Contracting Party where such property is situated, shall succeed to such property, and shall themselves or by their agents be permitted to take possession thereof, and to retain or dispose of it at their pleasure. Such disposition, succession and retention shall be subject to the provisions of Article IX and exempt from any other charges higher, and from any restrictions more burdensome, than those applicable in like cases of nationals, corporations and associations of such other High Contracting Party. The nationals, corporations and associations of either High Contracting Party shall be permitted to succeed, as heirs, legatees and donees, to personal property of every kind within the territories of the other High Contracting Party, left or given to them by nationals of either High Contracting Party or by nationals of any third country, and shall themselves or by their agents be permitted to take possession thereof, and to retain or dispose of it at their pleasure. Such disposition, succession and retention shall be subject to the provisions of Article IX and exempt from any other charges, and from any restrictions, other or higher than those applicable in like cases of nationals, corporations and associations of such other High Contracting Party. Nothing in this paragraph shall be construed to affect the laws and regulations of either High Contracting Party prohibiting or restricting the direct or indirect ownership by aliens or foreign corporations and associations of the shares in, or instruments of indebtedness of, corporations and associations of such High Contracting Party carrying on particular types of activities.

4. The nationals, corporations and associations of either High Contracting Party shall, subject to the exceptions in paragraph 3 of Article IX, receive treatment in respect of all matters which relate to the acquisition, ownership, lease, possession or disposition of personal property, no less favorable than the treatment which is or may hereafter be accorded to nationals, corporations and associations of any third country.

Article VIII

The nationals, corporations and associations of either High Contracting Party shall enjoy, within the territories of the other High Contracting Party, all rights and privileges of whatever nature in regard to patients, trade marks, trade labels, trade names and other industrial property, upon compliance with the applicable laws and regulations respecting registration and other formalities, upon terms no less favorable than are or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party, and no less favorable than the treatment now or hereafter accorded to nationals, corporations and associations of any third country.

Article IX

1. Nationals, corporations and associations of either High Contracting Party shall not be subjected to the payment of internal taxes, fees and charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, within the territories of the other High Contracting Party:

(a) more burdensome than those borne by nationals, residents, and corporations and associations of any third country;
(b) more burdensome than those borne by nationals, corporations and associations of such other High Contracting Party, in the case of persons resident or engaged in business within the territories of such other High Contracting Party, and in the case of corporations and associations engaged in business therein, or organized and operated exclusively for scientific, educational, religious or philanthropic purposes.

2. In the case of corporations and associations of either High Contracting Party, engaged in business within the territories of the other High Contracting Party, and in the case of nationals of either High Contracting Party engaged in business within the territories of the other High Contracting Party but not resident therein, such other High Contracting Party shall not impose or apply any internal tax, fee or charge upon any income, capital or other basis in excess of that reasonably allocable or apportionable to its territories, nor grant deductions and exemptions less than those reasonably allocable or apportionable to its territories. A comparable rule shall apply also in the case of corporations and associations organized and operated exclusively for scientific, educational, religious or philanthropic purposes.

3. Notwithstanding the provisions of paragraph 1 of the present Article, each High Contracting Party reserves the right to: *(a)* extend specific advantages as to taxes, fees and charges to nationals, residents, and corporations and associations of all foreign countries on the basis of reciprocity; *(b)* accord to nationals, residents, and corporations and associations of a third country special advantages by virtue of an agreement with such country for the avoidance of double taxation or the mutual protection of revenue; and *(c)* accord to its own nationals and to residents of contiguous countries more favorable exemptions of a personal nature than are accorded to other nonresident persons.

Article X

Commercial travelers representing nationals, corporations or associations of either High Contracting Party engaged in business within the territories therof, shall, upon their entry into and sojourn within the territories of the other High Contracting Party and on departure therefrom, be accorded treatment no less favorable than the treatment now or hereafter accorded to commercial travelers of any third country in respect of customs and other rights and privileges and, subject to the exceptions in paragraph 3 of Article IX, in respect of all taxes and charges applicable to them or to their samples.

Article XI

1. The nationals of either High Contracting Party shall, within the territories of the other High Contracting Party, be permitted to exercise liberty of conscience and freedom of worship, and they may, whether individually, collectively or in religious corporations or associations, and without annoyance or molestation of any kind by reason of their religious belief, conduct services, either within their own houses or within any other appropriate buildings, provided that their teachings or practices are not contrary to public morals or public order.

2. The High Contracting Parties declare their adherence to the principles of freedom of the press and of free interchange of information. To this end, nationals, corporations and associations of either High Contracting Party shall have the right, within the territories of the other High Contracting Party, to engage in such activities as writing, reporting and gathering of information for dissemination to the public, and shall enjoy freedom of transmission of material to be used abroad for publication by the press, radio, motion pictures, and other means. The nationals, corporations and associations of either High Contracting Party shall enjoy freedom of publication in the territories of the other High Contracting Party, in accordance with the applicable laws and regulations, upon the same terms as nationals, corporations or associations of such other High Contracting Party. The term "information", as used in this paragraph, shall include all forms of written communications, printed matter, motion pictures, recordings and photographs[1].

3. The nationals of either High Contracting Party shall be permitted within the territories of the other High Contracting Party to bury their dead according to their religious customs in suitable and convenient places which are or may hereafter be established and maintained for the purpose, subject to the applicable mortuary and sanitary laws and regulations.

Article XII

1. The nationals of either High Contracting Party, regardless of alienage or place of residence, shall be accorded rights and privileges no less favorable than those accorded to the nationals of the other High Contracting Party, under laws and regulations within the territories of such other High Contracting Party that *(a)* establish a civil liability for injury or death, and give a right of action to an injured person, or to the relatives, heirs, dependents or personal representative as the case may be, of an injured or deceased person, or that *(b)* grant to a wage earner or an individual receiving salary, commission or other remuneration, or to his relatives, heirs or dependents, as the case may be, a right of action, or a pecuniary compensation or other benefit or service, on account of occupational disease, injury or death arising out of and in the course of employment or due to the nature of employment.

2. In addition to the rights and privileges provided in paragraph 1 of this Article, the nationals of either High Contracting Party shall, within the territories of the other High Contracting Party, be accorded, upon terms no less favorable than those applicable to nationals of such other High Contracting Party, the benefits of laws and regulations establishing systems of compulsory insurance, under which benefits are paid without an individual test of financial need: *(a)*

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[1] See also para. 5 of Protocol, p. 26, *infra.*

against loss of wages or earnings due to old age, unemployment or sickness or other disability, or *(b)* against loss of financial support due to the death of father, husband or other person on whom such support had depended.

Article XIII

1. The nationals of each High Contracting Party shall be exempt, except as otherwise provided in paragraph 2 of this Article, from compulsory training or service in the armed forces of the other High Contracting Party, and shall also be exempt from all contributions in money or in kind imposed in lieu thereof.

2. During any period of time when both of the High Contracting Parties are, through armed action in connection with which there is general compulsory service, *(a)* enforcing measures against the same third country or countries in pursuance of obligations for the maintenance of international peace and security, or *(b)* concurrently conducting hostilities against the same third country or countries, the exemptions provided in paragraph 1 of this Article shall not apply. However, in such an event the nationals of either High Contracting Party in the territories of the other High Contracting Party, who have not declared their intention to acquire the nationality of such other High Contracting Party, shall be exempt from service in the armed forces of such other High Contracting Party if within a reasonable period of time they elect, in lieu of such service, to enter the armed forces of the High Contracting Party of which they are nationals. In any such situation the High Contracting Parties will make the necessary arrangements for giving effect to the provisions of this paragraph.

Article XIV

1. In all matters relating to *(a)* customs duties and subsidiary charges of every kind imposed on imports or exports and in the method of levying such duties and charges, *(b)* the rules, formalities, and charges imposed in connection with the clearing of articles through the customs, and *(c)* the taxation, sale, distribution or use within the country of imported articles and of articles intended for exportation, each High Contracting Party shall accord to articles the growth, produce or manufacture of the other High Contracting Party, from whatever place arriving, or to articles destined for exportation to the territories of such other High Contracting Party, by whatever route, treatment no less favorable than the treatment now or hereafter accorded to like articles the growth, produce or manufacture of, or destined for, any third country.

2. With respect to the matters referred to in paragraph 1 of this Article, the nationals, corporations and associations of either High Contracting Party shall be accorded, within the territories of the other High Contracting Party, treatment no less favorable than the treatment which is or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party; and with respect to such matters the nationals, corporations and associations, vessels and cargoes of either High Contracting Party shall be accorded, within the territories of the other High Contracting Party, treatment no less favorable than the treatment which is or may hereafter be accorded to nationals, corporations and associations, vessels and cargoes of any third country.

3. No prohibition or restriction of any kind shall be imposed by either High Contracting Party on the importation, sale, distribution or use of any article the growth, produce or manufacture of the other High Contracting Party, or on the exportation of any article destined for the territories of the other High Contracting Party, unless the importation, sale, distribution or use of the like article the

growth, produce or manufacture of all third countries, or the exportation of the like article to all third countries, respectively, is similarly prohibited or restricted[1].

4. If either High Contracting Party imposes any quantitative regulation, whether made effective through quotas, licenses or other measures, on the importation or exportation of any article, or on the sale, distribution or use of any imported article, it shall as a general rule give public notice of the total quantity or value of such article permitted to be imported, exported, sold, distributed or used during a specified period, and of any change in such quantity or value. Furthermore, if either High Contracting Party allots to any third country a share of such total quantity or value of any article in which the other High Contracting Party has an important interest, it shall as a general rule allot to such other High Contracting Party a share of such total quantity or value based upon the proportion of the total quantity or value supplied by, or in the case of exports a share based upon the proportion exported to, the territories of such other High Contracting Party during a previous representative period, account being taken in so far as practicable of any special factors which may have affected or may be affecting the trade in that article. The provisions of this paragraph relating to imported articles shall also apply in respect of the quantity or value of any article permitted to be imported free of duty or tax, or at a lower rate of duty or tax than the rate of duty or tax imposed on imports in excess of such quantity or value.

5. If either High Contracting Party requires documentary proof of origin of imported articles, the requirements imposed therefor shall be reasonable and shall not be such as to constitute an unnecessary hindrance to indirect trade.

Article XV

1. Laws, regulations of administrative authorities and decisions of administrative or judicial authorities of each High Contracting Party that have general application and that pertain to the classification of articles for customs purposes or to rates of duty shall be published promptly in such a manner as to enable traders to become acquainted with them. Such laws, regulations and decisions shall be applied uniformly at all ports of each High Contracting Party, except as otherwise specifically provided for in statutes of the United States of America with respect to the importation of articles into its insular territories and possessions.

2. No administrative ruling by the United States of America effecting advances in rates of duties or charges applicable under an established and uniform practice to imports originating in the territories of the Italian Republic, or imposing any new requirement with respect to such importations, shall as a general rule be applied to articles the growth, produce or manufacture of the Italian Republic already en route at the time of publication thereof in accordance with the preceding paragraph; reciprocally, no administrative ruling by the Italian Republic effecting advances in rates of duties or charges applicable under an established and uniform practice to imports originating in the territories of the United States of America, or imposing any new requirement with respect to such importations, shall as a general rule be applied to articles the growth, produce or manufacture of the United States of America already en route at the time of publication thereof in accordance with the preceding paragraph. However, if either High Contracting Party customarily exempts from such new or increased obligations articles entered for consumption or withdrawn from warehouse for consumption

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[1] See also paras. 1 and 2 of Additional Protocol, p. 27, *infra*.

during a period of thirty days after the date of such publication, such practice shall be considered full compliance by such High Contracting Party with this paragraph. The provisions of this paragraph shall not apply to administrative orders imposing antidumping or countervailing duties or relating to regulations for the protection of human, animal or plant life or health, or relating to public safety, or giving effect to judicial decisions.

3. Each High Contracting Party shall provide some administrative or judicial procedure under which the nationals, corporations and associations of the other High Contracting Party, and importers of articles the growth, produce or manufacture of such other High Contracting Party, shall be permitted to appeal against fines and penalties imposed upon them by the customs authorities, confiscations by such authorities and rulings of such authorities on questions of customs classification and of valuation of articles for customs purposes. Greater than nominal penalties shall not be imposed by either High Contracting Party in connection with any importation by the nationals, corporations or associations of the other High Contracting Party, or in connection with the importation of articles the growth, produce or manufacture of such other High Contracting Party, because of errors in documentation which are obviously clerical in origin or with regard to which good faith can be established.

4. Each High Contracting Party will accord sympathetic consideration to such representations as the other High Contracting Party may make with respect to the operation or administration of import or export prohibitions or restrictions, quantitative regulations, customs regulations or formalities, or sanitary laws, or regulations for the protection of human, animal or plant life or health.

Article XVI

1. Articles the growth, produce or manufacture of either High Contracting Party, imported into the territories of the other High Contracting Party, shall be accorded treatment with respect to all matters affecting internal taxation, or the sale, distribution or use within such territories, no less favorable than the treatment which is or may hereafter be accorded to like articles of national origin[1].

2. Articles grown, produced or manufactured within the territories of either High Contracting Party in whole or in part by nationals, corporations and associations of the other High Contracting Party, or by corporations and associations of the High Contracting Party within the territories of which such articles are grown, produced or manufactured which are controlled by nationals, corporations and associations of the other High Contracting Party, shall be accorded within such territories treatment with respect to all matters affecting internal taxation, or the sale, distribution or use therein, or exportation therefrom, no less favorable than the treatment now or hereafter accorded to like articles grown, produced or manufactured therein in whole or in part by nationals, corporations and associations of the High Contracting Party within the territories of which the articles are grown, produced or manufactured, or by corporations and associations of such High Contracting Party which are controlled by such nationals, corporations and associations. The articles specified in the preceding sentence shall not in any case receive treatment less favorable than the treatment which is or may hereafter be accorded to like articles grown, produced or manufactured in whole or in part by nationals, corporations and associations of any third country, or by corporations and associations controlled by such nationals, corporations and associations.

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[1] See also para. 3 of Additional Protocol, p. 28, *infra*.

3. In all matters relating to export bounties, customs drawbacks and the warehousing of articles intended for exportation, the nationals, corporations and associations of either High Contracting Party shall be accorded within the territories of the other High Contracting Party treatment no less favorable than the treatment which is or may hereafter be accorded to the nationals, corporations and associations of such other High Contracting Party.

Article XVII

1. The treatment prescribed in this Article shall apply to all forms of control of financial transactions, including *(a)* limitations upon the availability of media necessary to effect such transactions, *(b)* rates of exchange, and *(c)* prohibitions, restrictions, delays, taxes, charges and penalties on such transactions; and shall apply whether a transaction takes place directly, or through an intermediary in another country. As used in this Article, the term "financial transactions" means all international payments and transfers of funds effected through the medium of currencies, securities, bank deposits, dealings in foreign exchange or other financial arrangements, regardless of the purpose or nature of such payments and transfers.

2. Financial transactions between the territories of the two High Contracting Parties shall be accorded by each High Contracting Party treatment no less favorable than that now or hereafter accorded to like transactions between the territories of such High Contracting Party and the territories of any third country.

3. Nationals, corporations and associations of either High Contracting Party shall be accorded by the other High Contracting Party treatment no less favorable than that now or hereafter accorded to nationals, corporations and associations of such other High Contracting Party and no less favorable than that now or hereafter accorded to nationals, corporations and associations of any third country, with respect to financial transactions between the territories of the two High Contracting Parties or between the territories of such other High Contracting Party and of any third country.

4. In general, any control imposed by either High Contracting Party over financial transactions shall be so administered as not to influence disadvantageously the competitive position of the commerce or investment of capital of the other High Contracting Party in comparison with the commerce or the investment of capital of any third country.

Article XVIII

1. If either High Contracting Party establishes or maintains a monopoly or agency for the importation, exportation, purchase, sale, distribution or production of any article, or grants exclusive privileges to any agency to import, export, purchase, sell, distribute or produce any article, such monopoly or agency shall accord to the commerce of the other High Contracting Party fair and equitable treatment in respect of its purchases of articles the growth, produce or manufacture of foreign countries and its sales of articles destined for foreign countries. To this end, the monopoly or agency shall, in making such purchases or sales of any article, be influenced solely by considerations, such as price, quality, marketability, transportation and terms of purchase or sale, which would ordinarily be taken into account by a private commercial enterprise interested solely in purchasing or selling such article on the most favorable terms. If either High Contracting Party establishes or maintains a monopoly or agency for the sale of any service or grants exclusive privileges to any agency to sell any service, such monopoly

or agency shall accord fair and equitable treatment to the other High Contracting Party and to the nationals, corporations and associations and to the commerce thereof in respect of transactions involving such service as compared with the treatment which is or may hereafter be accorded to any third country and to the nationals, corporations and associations and to the commerce thereof[1].

2. Each High Contracting Party, in the awarding of concessions and other contracts, and in the purchasing of supplies, shall accord fair and equitable treatment to the nationals, corporations and associations and to the commerce of the other High Contracting Party as compared with the treatment which is or may hereafter be accorded to the nationals, corporations and associations and to the commerce of any third country.

3. The two High Contracting Parties agree that business practices which restrain competition, limit access to markets or foster monopolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination, agreement or other arrangement among public or private commercial enterprises may have harmful effects upon the commerce between their respective territories. Accordingly, each High Contracting Party agrees upon the request of the other High Contracting Party to consult with respect to any such practices and to take such measures as it deems appropriate with a view to eliminating such harmful effects.

Article XIX

1. Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation.

2. Vessels under the flag of either High Contracting Party, and carrying the papers required by its national law in proof of nationality, shall be deemed to be vessels of that High Contracting Party both within the ports, places and waters of the other High Contracting Party and on the high seas. As used in this Treaty, "vessels" shall be construed to include all vessels of either High Contracting Party whether privately owned or operated or publicly owned or operated. However, the provisions of this Treaty other than this paragraph and paragraph 4 of Article XX shall not be construed to accord rights to vessels of war or fishing vessels of the other High Contracting Party; nor shall they be construed to extend to nationals, corporations and associations, vessels and cargoes of, or to articles the growth, produce or manufacture of, such other High Contracting Party any special privileges restricted to national fisheries or the products thereof.

3. The vessels of either High Contracting Party shall have liberty, equally with the vessels of any third country, to come with their cargoes to all ports, places and waters of the other High Contracting Party which are or may hereafter be open to foreign commerce and navigation.

Article XX

1. The vessels and cargoes of either High Contracting Party shall, within the ports, places and waters of the other High Contracting Party, in all respects be accorded treatment no less favorable than the treatment accorded to the vessels and cargoes of such other High Contracting Party, irrespective of the port of departure or the port of destination of the vessel, and irrespective of the origin or the destination of the cargo.

2. No duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges, of whatever kind or denomination,

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[1] See also para. 3 of Protocol, p. 26, *infra*.

levied in the name or for the profit of the government, public functionaries, private individuals, corporations or establishments of any kind, shall be imposed in the ports, places and waters of either High Contracting Party upon the vessels of the other High Contracting Party, which shall not equally and under the same conditions be imposed upon national vessels.

3. No charges upon passengers, passenger fares or tickets, freight moneys paid or to be paid, bills of lading, contracts of insurance or re-insurance, no conditions relating to the employment of ship brokers, and no other charges or conditions of any kind, shall be imposed in a way tending to accord any advantage to national vessels as compared with the vessels of the other High Contracting Party.

4. If a vessel of either High Contracting Party shall be forced by stress of weather or by reason of any other distress to take refuge in any of the ports, places or waters of the other High Contracting Party not open to foreign commerce and navigation, it shall receive friendly treatment and assistance and such repairs, as well as supplies and materials for repair, as may be necessary and available. This paragraph shall apply to vessels of war and fishing vessels, as well as to vessels as defined in paragraph 2 of Article XIX.

5. The vessels and cargoes of either High Contracting Party shall not in any case, with respect to the matters referred to in this Article, receive treatment less favorable than the treatment which is or may hereafter be accorded to the vessels and cargoes of any third country.

Article XXI

1. It shall be permissible, in the vessels of either High Contracting Party, to import into the territories of the other High Contracting Party, or to export therefrom, all articles which it is or may hereafter be permissible to import into such territories, or to export therefrom, in the vessels of such other High Contracting Party or of any third country; and such articles shall not be subject to any higher duties or charges whatever than those to which the articles would be subject if they were imported or exported in vessels of the other High Contracting Party or of any third country.

2. Bounties, drawbacks and other privileges of this nature of whatever kind or denomination which are or may hereafter be allowed, in the territories of either High Contracting Party, on articles imported or exported in national vessels or vessels of any third country shall also and in like manner be allowed on articles imported or exported in vessels of the other High Contracting Party.

Article XXII

1. Vessels of either High Contracting Party shall be permitted to discharge portions of cargoes, including passengers, at any ports, places or waters of the other High Contracting Party which are or may hereafter be open to foreign commerce and navigation, and to proceed with the remaining portions of such cargoes or passengers to any other such ports, places or waters, without paying higher tonnage dues or port charges in such cases than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner, in the same voyage outward, at the various ports, places and waters which are or may hereafter be open to foreign commerce and navigation. The vessels and cargoes of either High Contracting Party shall be accorded, with respect to the matters referred to in this paragraph, treatment in the ports, places and waters of the other High Contracting Party no less favorable than the treatment which is or may hereafter be accorded to the vessels and cargoes of any third country.

2. The coasting trade and inland navigation of each High Contracting Party are excepted from the requirements of national and most-favored-nation treatment.

Article XXIII

There shall be freedom of transit through the territories of each High Contracting Party by the routes most convenient for international transit *(a)* for persons who are nationals of any third country, together with their baggage, directly or indirectly coming from or going to the territories of the other High Contracting Party, *(b)* for persons who are nationals of the other High Contracting Party, together with their baggage, regardless of whether they are coming from or going to the territories of such other High Contracting Party, and *(c)* for articles directly or indirectly coming from or going to the territories of the other High Contracting Party. Such persons, baggage and articles in transit shall not be subject to any transit duty, to any unnecessary delays or restrictions, or to any discrimination in respect of charges, facilities or any other matter; and all charges and regulations prescribed in respect of such persons, baggage or articles shall be reasonable, having regard to the conditions of the traffic. Either High Contracting Party may require that such baggage and articles be entered at the proper customhouse and that they be kept whether or not under bond in customs custody; but such baggage and articles shall be exempt from all customs duties or similar charges if such requirements for entry and retention in customs custody are complied with and if they are exported within one year and satisfactory evidence of such exportation is presented to the customs authorities. Such nationals, baggage, persons and articles shall be accorded treatment with respect to all charges, rules and formalities in connection with transit no less favorable than the treatment which is or may hereafter be accorded to the nationals of any third country, together with their baggage, or to persons and articles coming from or going to the territories of any third country.

Article XXIV

1. Nothing in this Treaty shall be construed to prevent the adoption or enforcement by either High Contracting Party of measures:

(a) relating to the importation or exportation of gold or silver;

(b) relating to the exportation of objects the value of which derives primarily from their character as works of art, or as antiquities, of national interest or from their relationship to national history, and which are not in general practice considered articles of commerce;

(c) relating to fissionable materials, to materials which are the source of fissionable materials, or to radio-active materials which are by-products of fissionable materials;

(d) relating to the production of and traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on for the purpose of supplying a military establishment;

(e) necessary in pursuance of obligations for the maintenance of international peace and security, or necessary for the protection of the essential interests of such High Contracting Party in time of national emergency; or

(f) imposing exchange restrictions, as a member of the International Monetary Fund, in conformity with the Articles of Agreement thereof signed at Washington December 27, 1945[1], but without utilizing its privileges under Article VI, section 3,

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[1] *TIAS* 1501, Vol. 3, p. 1351.

of that Agreement so as to impair any provision of this Treaty; provided that either High Contracting Party may, nevertheless, regulate capital transfers to the extent necessary to insure the importation of essential goods or to effect a reasonable rate of increase in very low monetary reserves or to prevent its monetary reserves from falling to a very low level. If the International Monetary Fund should cease to function, or if either High Contracting Party should cease to be a member thereof, the two High Contracting Parties, upon the request of either High Contracting Party, shall consult together and may conclude such arrangements as are necessary to permit appropriate action in contingencies relating to international financial transactions comparable with those under which exceptional action had previously been permissible.

2. Subject to the requirement that, under like circumstances and conditions, there shall be no arbitrary discrimination by either High Contracting Party against the other High Contracting Party or against the nationals, corporations, associations, vessels or commerce thereof, in favor of any third country or the nationals, corporations, associations, vessels or commerce thereof, the provisions of this Treaty shall not extend to prohibitions or restrictions:

(a) imposed on moral or humanitarian grounds;
(b) designed to protect human, animal or plant life or health;
(c) relating to prison-made goods; or
(d) relating to the enforcement of police or revenue laws.

3. The provisions of this Treaty according treatment no less favorable than the treatment accorded to any third country shall not apply to:

(a) advantages which are or may hereafter be accorded to adjacent countries in order to facilitate frontier traffic;

(b) advantages accorded by virtue of a customs union of which either High Contracting Party may, after consultation with the other High Contracting Party, become a member so long as such advantages are not extended to any country which is not a member of such customs union;

(c) advantages accorded to third countries pursuant to a multilateral economic agreement of general applicability, including a trade area of substantial size, having as its objective the liberalization and promotion of international trade or other international economic intercourse, and open to adoption by all the United Nations[1];

(d) advantages now accorded or which may hereafter be accorded by the Italian Republic to San Marino, to the Free Territory of Trieste or to the State of Vatican City, or by the United States of America or its territories or possessions to one another, to the Panama Canal Zone, to the Republic of Cuba, to the Republic of the Philippines or to the Trust Territory of the Pacific Islands; or

(e) advantages which, pursuant to a decision made by the United Nations or an organ thereof or by an appropriate specialized agency in relationship with the United Nations, may hereafter be accorded by either High Contracting Party to areas other than those enumerated in subparagraph *(d)* of the present paragraph.

The provisions of subparagraph *(d)* shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America or its territories or possessions to one another irrespective of any change in the political status of any of the territories or possessions of the United States of America.

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[1] For an understanding relating to para. 3 *(c)* of Article XXIV, see exchanges of notes, pp. 29-31, *infra*.

4. The provisions of this Treaty shall not be construed to accord any rights or privileges to persons, corporations and associations to engage in political activities, or to organize or participate in political corporations and associations.

5. Each High Contracting Party reserves the right to deny any of the rights and privileges accorded by this Treaty to any corporation or association created or organized under the laws and regulations of the other High Contracting Party in the ownership or direction of which nationals of any third country or countries have directly or indirectly a controlling interest.

6. No enterprise of either High Contracting Party which is publicly owned or controlled shall, if it engages in commercial, manufacturing, processing, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, from suit, from execution of judgment, or from any other liability to which a privately owned and controlled enterprise is subject therein.

7. The provisions of this Treaty shall not be construed to affect existing laws and regulations of either High Contracting Party in relation to immigration or the right of either High Contracting Party to adopt and enforce laws and regulations relating to immigration; provided, however, that nothing in this paragraph shall prevent the nationals of either High Contracting Party from entering, traveling and residing in the territories of the other High Contracting Party in order to carry on trade between the two High Contracting Parties or to engage in any commercial activity related thereto or connected therewith, upon terms as favorable as are or may hereafter be accorded to the nationals of any third country entering, traveling and residing in such territories in order to carry on trade between such other High Contracting Party and such third country or to engage in commercial activity related to or connected with such trade.

Article XXV

Subject to any limitation or exception provided in this Treaty or hereafter agreed upon between the High Contracting Parties, the territories of the High Contracting Parties to which the provisions of this Treaty extend shall be understood to comprise all areas of land and water under the sovereignty or authority of either of the High Contracting Parties, other than the Canal Zone, and other than the Trust Territory of the Pacific Islands except to the extent that the President of the United States of America shall by proclamation extend provisions of the Treaty to such Trust Territory.

Article XXVI

Any dispute between the High Contracting Parties as to the interpretation or the application of this Treaty, which the High Contracting Parties shall not satisfactorily adjust by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties shall agree to settlement by some other pacific means.

Article XXVII

1. This Treaty shall be ratified, and the ratifications thereof shall be exchanged at Rome as soon as possible.

2. This Treaty shall enter into force on the day of the exchange of ratifications, and shall continue in force for a period of ten years from that day.

3. Unless one year before the expiration of the aforesaid period of ten years either High Contracting Party shall have given written notice to the other High

Contracting Party of intention to terminate this Treaty upon the expiration of the aforesaid period, the Treaty shall continue in force thereafter until one year from the date on which written notice of intention to terminate it shall have been given by either High Contracting Party.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this Treaty and have affixed hereunto their seals.

DONE in duplicate, in the English and Italian languages, both equally authentic, at Rome, this second day of February one thousand nine hundred forty-eight.

For the
Government of the United States
of America:
James Clement DUNN.

For the
Italian Government:
SFORZA.

PROTOCOL

At the time of signing the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic, the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered as integral parts of said Treaty:

1. The provisions of paragraph 2 of Article V, providing for the payment of compensation, shall extend to interests held directly or indirectly by nationals, corporations and associations of either High Contracting Party in property which is taken within the territories of the other High Contracting Party.
2. Rights and privileges with respect to commercial, manufacturing and processing activities accorded, by the provisions of the Treaty, to privately owned and controlled enterprises of either High Contracting Party within the territories of the other High Contracting Party shall extend to rights and privileges of an economic nature granted to publicly owned or controlled enterprises of such other High Contracting Party, in situations in which such publicly owned or controlled enterprises operate in fact in competition with privately owned and controlled enterprises. The preceding sentence shall not, however, apply to subsidies granted to publicly owned or controlled enterprises in connection with: *(a)* manufacturing or processing goods for government use, or supplying goods and services to the government for government use; or *(b)* supplying, at prices substantially below competitive prices, the needs of particular population groups for essential goods and services not otherwise practicably obtainable by such groups.
3. The concluding sentence of paragraph 1 of Article XVIII shall not be construed as applying to postal services.
4. The provisions of paragraph 2 *(a)* of Article I shall not be construed to extend to the practice of professions the members of which are designated by law as public officials.
5. The provisions of paragraph 2 of Article XI shall not be construed to affect measures taken by either High Contracting Party to safeguard military secrets.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this Protocol and have affixed hereunto their seals.

DONE in duplicate, in the English and Italian languages, both equally authentic, at Rome this second day of February one thousand nine hundred forty-eight.

For the Government of the United States of America: James Clement DUNN.	For the Italian Government: SFORZA.

ADDITIONAL PROTOCOL

In view of the grave economic difficulties facing Italy now and prospectively as a result of, *inter alia*, the damage caused by the late military operations on Italian soil; the looting perpetrated by the German forces following the Italian declaration of war against Germany; the present inability of Italy to supply, unassisted, the minimum needs of its people or the minimum requirements of Italian economic recovery; and Italy's lack of monetary reserves; at the time of signing the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic, the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered as integral parts of said Treaty:

1. The provisions of paragraph 3 of Article XIV of the abovementioned Treaty and that part of paragraph 4 of the same Article which relates to the allocation of shares, shall not obligate either High Contracting Party with respect to the application of quantitative restrictions on imports and exports:

(a) that have effect equivalent to exchange restrictions authorized in conformity with section 3 *(b)* of Article VII of the Articles of Agreement of the International Monetary Fund;

(b) that are necessary to secure, during the early post-war transitional period, the equitable distribution among the several consuming countries of goods in short supply;

(c) that are necessary in order to effect, for the purchase of imports, the utilization of accumulated inconvertible currencies; or

(d) that have effect equivalent to exchange restrictions permitted under section 2 of Article XIV of the Articles of Agreement of the International Monetary Fund.

2. The privileges accorded to either High Contracting Party by subparagraphs *(c)* and *(d)*, paragraph 1, of the present Protocol, shall be limited to situations in which *(a)* it is necessary for such High Contracting Party to apply restrictions on imports in order to forestall the imminent threat of, or to stop, a serious decline in the level of its monetary reserves or, in the case of very low monetary reserves, to achieve a reasonable rate of increase in its reserves, and *(b)* the application of the necessary restrictions in the manner permitted by the aforesaid paragraph 1 will yield such High Contracting Party a volume of imports above the maximum level which would be possible if such restrictions were applied in the manner prescribed in paragraphs 3 and 4 of Article XIV of the Treaty.

3. During the current transitional period of recovery from the recent war, the provisions of Article XVI, paragraph 1, of the Treaty shall not prevent the application by either High Contracting Party of needed controls to the internal sale, distribution or use of imported articles in short supply, other than or different from controls applied with respect to like articles of national origin. However, no such controls over the internal distribution of imported articles shall be *(a)* applied by either High Contracting Party in such a manner as to cause unnecessary injury to the competitive position within its territories of the commerce of the other High Contracting Party, or *(b)* continued longer than required by the supply situation.

4. Neither High Contracting Party shall impose any new restriction under paragraph 1 of the present Protocol without having given the other High Contracting Party notice thereof which shall, if possible, be not less than thirty days in advance and shall not in any event be less than ten days in advance. Each High Contracting Party shall afford to the other High Contracting Party opportunity for consultation at any time concerning the need for and application of restrictions to which such paragraph relates as well as concerning the application of paragraph 3; and either High Contracting Party shall have the right to invite the International Monetary Fund to participate in such consultation, with reference to restrictions to which subparagraphs *(a)*, *(c)* and *(d)* of paragraph 1 relate.

5. Whenever exchange difficulties necessitate that pursuant to Article XXIV, paragraph 1 *(f)*, the Italian Government regulate the withdrawals provided for in Article V, paragraph 2, the Italian Government may give priority to applications made by nationals, corporations and associations of the United States of America to withdraw compensation received on account of property acquired on or before December 8, 1934, or, if subsequently acquired:

(a) in the case of immovable property, if the owner at the time of acquisition had permanent residence outside Italy, or, if a corporation or association, had its center of management outside Italy;

(b) in the case of shares of stock, if at the time of acquisition Italian laws and regulations permitted such shares to be traded outside Italy;

(c) in the case of bank deposits, if carried on free account at the time of taking;

(d) in any case, if the property was acquired through importing foreign exchange, goods or services into Italy, or through reinvestments of profits or accrued interest from such imports whenever made.

The Italian Government undertakes to grant every facility to assist applicants in establishing their status for the purposes of this paragraph; and to accept evidence of probative value as establishing, in the absence of preponderant evidence to the contrary, a priority claim.

6. Whenever a multiple exchange rate system is in effect in Italy, the rate of exchange which shall be applicable for the purposes of Article V, paragraph 2, need not be the most favorable of all rates applicable to international financial transactions of whatever nature; provided, however, that the rate applicable will in any event permit the recipient of compensation actually to realize the full economic value thereof in United States dollars. In case dispute arises as to the rate applicable, the rate shall be determined by agreement between the High Contracting Parties.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this Protocol and have affixed hereunto their seals.

DONE in duplicate, in the English and Italian languages, both equally authentic, at Rome, this second day of February one thousand nine hundred forty-eight.

For the
Government of the United States
of America:
James Clement DUNN.

For the
Italian Government:
SFORZA.

EXCHANGES OF NOTES

The American Ambassador to the Minister of Foreign Affairs

F.O. NO. 827

Rome, February 2, 1948.

Excellency:

I have the honor to refer to the proposals advanced by representatives of your Government, during the course of negotiations for the Treaty of Friendship, Commerce and Navigation signed this day, for facilitating and expanding the cultural relations between the peoples of our two countries.

I take pleasure in informing you that my Government, recognizing the importance of cultural ties between nations as developing increased understanding and friendship, will undertake to stimulate and foster cultural relations between our two countries, including the interchange of professors, students, and professional and academic personnel between the territories of the United States of America and of Italy, and agrees to discuss at a later time the possibility of agreements designed to establish arrangements whereby such interchange may be facilitated and whereby the cultural bonds between the two peoples may generally be strengthened.

Accept, Excellency, the renewed assurances of my highest consideration.

James Clement DUNN.

His Excellency Count Carlo Sforza,
Minister of Foreign Affairs,
Rome.

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

THE MINISTER OF FOREIGN AFFAIRS

Rome, February 2, 1948.

Excellency:

I have the honor to refer to Your Excellency's note of this date, which reads as follows:

[For text of the United States note, see above.]

I have the honor to inform Your Excellency that the Italian Government will undertake, for its part, to stimulate and foster cultural relations, including the interchange of professors, students and academic personnel, and to discuss the possibility of cultural agreements between our two Governments in accordance with the ideas expressed in Your Excellency's note.

I take pleasure in availing myself of this occasion, Excellency, to renew to you the assurances of my highest consideration.

SFORZA.

To His Excellency James Clement Dunn,
Ambassador of the United States of America,
Rome.

The American Ambassador to the Minister of Foreign Affairs

EMBASSY OF THE UNITED STATES OF AMERICA

F.O. NO. 3170

Excellency:

I have the honor to refer to paragraph 3 *(c)* of Article XXIV of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic signed at Rome on February 2, 1948, and to inform Your Excellency that it is the understanding of the Government of the United States of America that the provisions of the aforesaid Treaty relating to the treatment of goods do not preclude action by either of the parties thereto which is required or specifically permitted by the General Agreement on Tariffs and Trade[1] or by the Havana Charter for an International Trade Organization[2], during such time as the party applying such measures is a contracting party to the General Agreement or is a member of the International Trade Organization, as the case may be.

I shall be glad if Your Excellency will confirm this understanding on behalf of the Government of the Italian Republic.

Accept, Excellency, the renewed assurances of my highest consideration.

James Clement DUNN.

Rome, July 26, 1949.

His Excellency Count Carlo Sforza,
Minister of Foreign Affairs,
Rome.

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[1] *TIAS* 1700, Vol. 4, p. 641.

[2] Unperfected; for excerpts, see *A Decade of American Foreign Policy: Basic Documents, 1941-49* (S. Doc. 123, 81st Cong. 1st sess.), p. 391.

The Minister of Foreign Affairs to the American Ambassador

[TRANSLATION]

MINISTRY OF FOREIGN AFFAIRS

Rome, July 26, 1949.

Excellency:

I have the honor to refer to your letter dated today in which, referring to paragraph 3 *(c)* of Article XXIV of the Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic, signed at Rome on February 2, 1948, you inform me that it is the understanding of the Government of the United States of America that the provisions of the aforesaid Treaty relating to the treatment of goods do not preclude action by either of the parties thereto which is required or specifically permitted by the General Agreement on Tariffs and Trade or by the Havana Charter for an International Trade Organization, during such time as the party applying such measures is a contracting party to the General Agreement or is a member of the International Trade Organization.

I have the honor to inform you that the Italian Government agrees to the foregoing.

Accept, Excellency, the assurances of my high consideration.

SFORZA.

His Excellency James Clement Dunn,
Ambassador of the United States of America,
Rome.

ITALY

FRIENDSHIP, COMMERCE AND NAVIGATION

Agreement supplementing the treaty of February 2, 1948.

Signed at Washington September 26, 1951;
Ratification advised by the Senate of the United States of America, with an understanding, July 21, 1953;
Ratified by the President of the United States of America with said understanding, September 22, 1960;
Ratified by Italy October 28, 1960;
Instruments of ratification exchanged at Washington March 2, 1961;
Proclaimed by the President of the United States of America March 8, 1961;
Entered into force March 2, 1961.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS an agreement supplementing the treaty of friendship, commerce and navigation between the United States of America and the Italian Republic was signed at Washington on September 26, 1951, the original of which agreement, in the English and Italian languages, is word for word as follows:

AGREEMENT SUPPLEMENTING THE TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC

The United States of America and the Italian Republic, desirous of giving added encouragement to investments of the one country in useful undertakings in the other country, and being cognizant of the contribution which may be made toward this end by amplification of the principles of equitable treatment set forth in the Treaty of Friendship, Commerce and Navigation signed at Rome on February 2, 1948[1], have resolved to conclude a supplementary Agreement, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

Dean Acheson, Secretary of State of the United States of America, and

The President of the Italian Republic:

Giuseppe Pella, Minister of the Budget of the Italian Republic,

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[1] *TIAS* 1965; 63 Stat., pt. 2, p. 2255.

Who, having communicated to each other their full powers found to be in due form, have agreed as follows:

Article I

The nationals, corporations and associations of either High Contracting Party shall not be subjected to arbitrary or discriminatory measures within the territories of the other High Contracting Party resulting particularly in: *(a)* preventing their effective control and management of enterprises which they have been permitted to establish or acquire therein; or, *(b)* impairing their other legally acquired rights and interests in such enterprises or in the investments which they have made, whether in the form of funds (loans, shares or otherwise), materials, equipment, services, processes, patents, techniques or otherwise. Each High Contracting Party undertakes not to discriminate against nationals, corporations and associations of the other High Contracting Party as to their obtaining under normal terms the capital, manufacturing processes, skills and technology which may be needed for economic development.

Article II

With reference to Article I, paragraph 2 *(c)*, of the said Treaty of Friendship, Commerce and Navigation, laws regarding qualifications for the practice of a profession shall not prevent the nationals, corporations and associations of either High Contracting Party from engaging, or contracting for the services of, technical and administrative experts for the particular purpose of making, exclusively within the enterprise, examinations, audits and technical investigations for, and rendering reports to, such nationals, corporations and associations in connection with the planning and operation of their enterprise, and enterprises in which they have a financial interest, within the territories of the other High Contracting Party.

Article III

1. Regarding the transferability of capital invested by nationals, corporations and associations of either High Contracting Party in the territories of the other, and the returns thereon, the High Contracting Parties undertake to grant each other the most liberal treatment practicable.

2. Each High Contracting Party will permit the nationals, corporations and associations of the other High Contracting Party to transfer freely, by obtaining exchange in the currency of their own country:

(a) Earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and funds for amortization of loans and depreciation of direct investments, and

(b) Funds for capital transfers.

If more than one rate of exchange is in force, the rate applicable to transfers referred to in the present paragraph shall be a rate which is specifically approved by the International Monetary Fund[1] for such transactions or, in the absence of such specifically approved rate, an effective rate which, inclusive of any tax or surcharges on exchange transfers, is just and reasonable.

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[1] *TIAS* 1501; 60 Stat. 1401.

Article IV

1. Notwithstanding the provisions of Article III of the present Agreement, each High Contracting Party shall retain the right, in periods of foreign exchange stringency, to apply: *(a)* exchange restrictions to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people; *(b)* exchange restrictions to the extent necessary to prevent its monetary reserves from falling to a very low level or to effect a moderate increase in very low monetary reserves; and *(c)* particular exchange restrictions specifically authorized or requested by the International Monetary Fund. In the event that either High Contracting Party applies exchange restrictions, it shall within a period of three months make reasonable and specific provisions for the transfers referred to in Article III, paragraph 2 *(a)*, together with such provisions for the transfers referred to in Article III, paragraph 2 *(b)*, as may be feasible, giving consideration to special needs for other transactions, and shall afford the other High Contracting Party adequate opportunity for consultation at any time regarding such provisions and other matters affecting such transfers. Such provisions shall be reviewed in consultation with such other High Contracting Party at intervals of not more than twelve months.

2. The provisions of the present Article, rather than those of Article XXIV, paragraph 1 *(f)*, of the said Treaty, shall govern as to the matters treated in the present Agreement.

Article V

In addition, and without prejudice to the other provisions of the present Agreement or of the said Treaty, there shall be applied to the investments made in Italy the regulations covering the special advantages set forth in the fields of taxation, customs and transportation rates, for the industrialization of Southern Italy under Law No. 1598 of December 14, 1948, and for the development of the Apuanian industrial area and the industrial areas of Verona, Gorizia, Trieste, Leghorn, Marghera, Bolzano and other areas covered by the Italian legislation now existing or which may in the future be adopted.

Article VI

The clauses of contracts entered into between nationals, corporations and associations of either High Contracting Party, and nationals, corporations and associations of the other High Contracting Party, that provide for the settlement by arbitration of controversies, shall not be deemed unenforceable within the territories of the other High Contracting Party merely on the grounds that the place designated for the arbitration proceedings is outside such territories, or that the nationality of one or more of the arbitrators is not that of such other High Contracting Party. No award duly rendered pursuant to any such contractual clause, which is final and enforceable under the laws of the place where rendered, shall be deemed invalid or denied effective means of enforcement within the territories of either High Contracting Party merely on the grounds that the place where such award was rendered is outside such territories or that the nationality of one or more of the arbitrators is not that of such High Contracting Party. It is understood that nothing herein shall be construed to entitle an award to be executed within the territories of either High Contracting Party until after it has been duly declared enforceable therein.

Article VII

1. The two High Contracting Parties, in order to prevent gaps in the social insurance protection of their respective nationals who at different times accumulate substantial periods of coverage under the principal old-age and survivors insurance system of one High Contracting Party and also under the corresponding system of the other High Contracting Party, declare their adherence to a policy of permitting all such periods to be taken into account under either such system in determining the rights of such nationals and of their families. The High Contracting Parties will make the necessary arrangements[1] to carry out this policy in accordance with the following principles:

(*a*) Such periods of coverage shall be combined only to the extent that they do not overlap or duplicate each other, and only in so far as both systems provide comparable types of benefits.
(*b*) In cases where an individual's periods of coverage are combined, the amount of benefits, if any, payable to him by either High Contracting Party shall be determined in such a manner as to represent, so far as practicable and equitable, that proportion of the individual's combined coverage which was accumulated under the system of that High Contracting Party.
(*c*) An individual may elect to have his right to benefits, and the amount thereof, determined without regard to the provisions of the present paragraph.

Such arrangements may provide for the extension of the present paragraph to one or more special old-age and survivors insurance systems of either High Contracting Party, or to permanent or extended disability insurance systems of either High Contracting Party.

2. At such time as the Maintenance of Migrants' Pension Rights Convention of 1935 enters into force with respect to both High Contracting Parties, the provisions of that Convention shall supersede, to the extent that they are inconsistent therewith, paragraph 1 of the present Article and arrangements made thereunder.

Article VIII

Each High Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such questions as the other High Contracting Party may raise with respect to any matter affecting the operation of the present Agreement or of the said Treaty.

Article IX

The present Agreement shall be ratified, and the ratifications thereof shall be exchanged at Washington as soon as possible. It shall enter into force on the day of exchange of ratifications, and shall thereupon constitute an integral part of the said Treaty of Friendship, Commerce and Navigation.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Agreement and have affixed hereunto their seals.

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[1] For understanding of the two Governments concerning arrangements under Art. VII, para. 1, see *post*, p. 36.

DONE in duplicate, in the English and Italian languages, both equally authentic, at Washington, this twenty-sixth day of September, one thousand nine hundred fifty-one.

For the United States of America:
Dean ACHESON.
[SEAL]

For the Italian Republic:
Giuseppe PELLA.
[SEAL]

WHEREAS the Senate of the United States of America by their resolution of July 21, 1953, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said agreement "subject to the understanding that the arrangements referred to in Article VII, paragraph 1, of the said agreement shall be made by the United States only in conformity with provisions of statute";

WHEREAS the text of the said understanding was communicated by the Government of the United States of America to the Government of the Italian Republic by a note dated July 24, 1953, and was accepted by the Government of the Italian Republic on a reciprocal basis;

WHEREAS the said agreement was ratified by the President of the United States of America on September 22, 1960, in pursuance of the aforesaid advice and consent of the Senate and subject to the said understanding, and was ratified on the part of the Italian Republic;

WHEREAS the respective instruments of ratification as aforesaid, were exchanged at Washington on March 2, 1961, and a protocol of exchange, in the English and Italian languages, was signed at that place and on that date by the respective Plenipotentiaries of the United States of America and the Italian Republic, the said protocol of exchange declaring that "it is understood that the entry into force of the arrangements mentioned in Article VII, paragraph 1, of the said agreement is subordinate in any case to the fulfilling on the part of the United States of America of its provisions of statute and on the part of the Italian Republic of its constitutional requirements";

AND WHEREAS it is provided in Article IX of the said agreement that the agreement shall enter into force on the day of exchange of ratifications;

NOW, THEREFORE, be it known that I, John F. Kennedy, President of the United States of America, do hereby proclaim and make public the said agreement to the end that the same and every article and clause thereof may be observed and fulfilled in good faith on and after March 2, 1961, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof, subject to the said understanding.

IN TESTIMONY WHEREOF, I have caused the Seal of the United States of America to be hereunto affixed.

DONE at the city of Washington this eighth day of March in the year of our Lord one thousand nine hundred and sixty-one and of the independence of the United States of America the one hundred eighty-fifth.

[SEAL]

John F. KENNEDY.

By the President:
Dean RUSK.
Secretary of State.

Attachment 2

SUMMARY OF DIPLOMATIC EFFORTS TO RESOLVE THIS DISPUTE

The Governments of the United States and the Republic of Italy have engaged in extensive but unsuccessful diplomatic exchanges regarding this dispute.

As early as April 1969, U.S. Commerce Secretary Stans met with Italian Industry and Commerce Minister Tanassi and conveyed the U.S. Government's desire for the amicable resolution of this dispute. In this and other diplomatic contacts through the end of 1973, the United States asked Italy to negotiate directly with Raytheon and Machlett and to compensate them for their losses. These early efforts were unsuccessful.

On February 7, 1974, therefore, the United States submitted its own diplomatic claim against Italy, asking for monetary reparations for the damages caused by Italy's wrongful actions. Included with that claim was a detailed legal memorial in which the U.S. alleged that Italy had violated the FCN Treaty and the Supplementary Agreement, as well as customary international law and municipal Italian law. On June 25, 1975, at Italy's request, the United States supplied a complete Italian translation of the factual and legal statements of the claim.

During the next three years, the United States claim was raised repeatedly with Italian officials, including demarches to Italian Foreign Minister Forlani by U.S. Ambassadors Volpe and Gardner in 1976 and 1977 respectively. Italy did not make a formal response.

Finally, on June 13, 1978, Italy denied the claim in a written Aide-Mémoire. On April 15, 1979, the United States replied in writing to the objections Italy raised in its denial and again asked for reparations. The United States also continued its efforts to resolve this claim through diplomatic communications, including unsuccessful discussions during a May 1979 meeting in Rome between U.S. Secretary of State Vance and Italian Foreign Minister Forlani.

The United States then determined that this dispute could only be resolved through third party dispute resolution. On January 6, 1981, and again on May 15, 1981 and April 5, 1982, the United States presented Diplomatic Notes to Italy asking that the claim be submitted to binding arbitration. The United States and Italy were unable to agree to this or any other method of dispute resolution.

On August 31, 1984 and on March 28, 1985, the United States therefore sent additional Diplomatic Notes to Italy asking that the claim be submitted to binding arbitration. On June 5, 1985, Italy invited a U.S. delegation to meet with representatives of the Ministry of Foreign Affairs to negotiate an arbitration agreement. United States and Italian delegations met in Rome in October 1985. The Italian delegation indicated during these meetings that Italy was not prepared to submit the dispute to arbitration. Instead, the delegations concurred that this dispute would be resolved through a contentious proceeding before a Chamber of this Court and jointly approved a press release setting forth this view.

Attachment 3

[Translation]

ORDER MADE ON 1 APRIL 1968 BY THE MAYOR OF PALERMO

THE MAYOR OF THE MUNICIPALITY OF PALERMO,

TAKING INTO CONSIDERATION that Raytheon-ELSI of Palermo has decided to close its plant located in this city at Via Villagrazia 79, because of market difficulties and lack of orders;

THAT the company has furthermore decided to send dismissal letters to the personnel consisting of about 1,000 persons;

TAKING NOTICE that ELSI's actions, beside provoking the reaction of the workers and of the unions giving rise to strikes (both general and sectional) has caused a wide and general movement of solidarity of all public opinion which has strongly stigmatized the action taken considering that about 1,000 families are suddenly destituted;

THAT, considering the fact that ELSI is the second firm in order of importance in the District, because of the shutdown of the plant a serious damage will be caused to the District, which has been so severely tried by the earthquakes had during the month of January 1968;

CONSIDERING also that the local press is taking a great interest in the situation and that the press is being very critical toward the authorities and is accusing them of indifference to this serious civic problem;

THAT, furthermore, the present situation is particularly touchy and unforeseeable disturbances of public order could take place;

TAKING INTO CONSIDERATION that in this particular instance there is sufficient ground for holding that there is a grave public necessity and urgency to protect the general economic public interest (already seriously compromised) and public order, and that these reasons justify requisitioning the plant and all equipment owned by Raytheon-ELSI located here at Via Villagrazia 79;

HAVING NOTED Article 7 of the law of 20 March 1865 No. 2248 enclosure e;

HAVING NOTED Article 69 of the Basic Regional Law EE.LL.,

ORDERS

the requisition, with immediate effect and for the duration of six months, except as may be necessary to extend such period, and without prejudice for the rights of the parties and of third parties, of the plant and relative equipment owned by Raytheon-ELSI of Palermo.

WITH a subsequent decree, the indemnification to be paid to said company for the requisition will be established.

CERTIFICATION OF TRANSLATION

I hereby certify that the above translation bearing LS No. 118355 was prepared by the Office of Language Services of the Department of State and that it is a correct translation to the best of my knowledge and belief.

Dated: Jan. 16, 1987.

(Signed) [Illegible],
Chief, Translating Division.

MEMORIAL OF THE UNITED STATES OF AMERICA

MÉMOIRE DES ÉTATS-UNIS D'AMÉRIQUE

PART I. INTRODUCTION

This case concerns the failure of the Government of Italy to afford to United States investors in Italy the protections and guarantees established by the 1948 Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic (the "Treaty") and its 1951 Supplement.

Beginning in 1956, Raytheon Company and, subsequently Machlett Laboratories, Inc., two United States corporations, invested in and gradually acquired complete ownership of an Italian electronics company, Elettronica Sicula, S.p.A. ("ELSI"). By 1967, ELSI had become an established and reputable producer of highly sophisticated electronics components. However, despite large investments of capital and other assistance from its United States owners, ELSI never became financially self-sufficient. In March 1968, therefore, Raytheon and Machlett reluctantly decided to close and liquidate ELSI and to settle all outstanding debts from the proceeds of the sale of its assets.

On 1 April 1968, however, the Government of Italy requisitioned ELSI's plant and related assets, in order to prevent the liquidation and to facilitate the acquisition of ELSI's assets by Italy's commercial conglomerate Istituto per la Ricostruzione Industriale ("IRI"). As a result, Raytheon and Machlett were unable to sell the plant and other assets and were forced to put ELSI into bankruptcy. Italian officials then publicly announced that ELSI would be taken over by IRI. Instead of buying ELSI's assets at the scheduled bankruptcy auctions, however, IRI negotiated a piecemeal take-over with bankruptcy authorities, selectively acquiring the assets it wanted at a price substantially below fair market value. The bankruptcy authorities similarly failed to recover the fair market value of ELSI's other assets. Bankruptcy proceeds accordingly were not sufficient to pay ELSI's debts. While ELSI had immediately appealed the requisition order to the appropriate Italian authority, who found it unlawful, this decision was not rendered until after Italy had purchased ELSI's plant and other assets.

As a result, Raytheon and Machlett suffered financial losses which they would not have suffered, had they been allowed to proceed with the planned liquidation of ELSI, or even had Italy formally expropriated ELSI and paid just compensation. Most significantly, Raytheon did not recover any of the amounts it was owed by ELSI, and was required in addition to satisfy Italian bank loans to ELSI which it had guaranteed. Five banks which were owned and controlled by the Government of Italy also brought suit against Raytheon in Italian courts for payment of loans to ELSI which Raytheon had not guaranteed. This litigation, which continued for 16 years at great expense to Raytheon, ended with the dismissal of all suits as unfounded.

The United States contends that these actions constitute a violation of the Treaty and Supplement. As explained below, the requisition and subsequent conduct were both arbitrary and discriminatory, prevented Raytheon and Machlett from managing and controlling an Italian corporation whose shares they had lawfully acquired, and resulted in the impairment of their legally acquired rights and interests — in violation of Articles III and VII of the Treaty and Article I of the Supplement. In addition, the requisition constituted a taking of Raytheon's and Machlett's interests in property without due process and without adequate compensation, in violation of Article V of the Treaty. Italian authorities also failed to comply with the obligation under Article V to afford the protection and security, by the unwarranted delay in ruling on the challenge to the requisition order and by failing to afford protection to ELSI's plant and premises.

After 18 years of unsuccessful attempts to resolve this matter through diplomatic channels, the United States appeals to the Court to find that the requisition and other actions and omissions of Italy constituted violations of the Treaty and Supplement and to order that full compensation be made to the United States for the damages suffered by Raytheon and Machlett as a result of Italy's failure to accord them the protections guaranteed by the Treaty and Supplement.

PART II. STATEMENT OF FACTS

CHAPTER I

BACKGROUND

From 1955 through 1967, Raytheon Company and Machlett Laboratories, Inc., two United States corporations, acquired 100 per cent of the shares of Elettronica Sicula S.p.A. ("ELSI"), an Italian electronics company operating in Palermo, Sicily. Although they developed ELSI into a manufacturer of sophisticated electronics equipment and a major employer in the Sicilian Region, ELSI never became a profitable enterprise. In 1967-1968, Raytheon and Machlett made a last major effort to make ELSI profitable.

Section 1. The Treaty of Friendship, Commerce and Navigation

On 2 February 1948, the United States and Italy signed a Treaty of Friendship, Commerce and Navigation (the "Treaty"). The Treaty entered into force on 26 July 1949[1]. The Treaty was subsequently strengthened by an Agreement of 26 September 1951 (the "Supplement"), which entered into force on 2 March 1961[2]. One of the major purposes of these agreements was to encourage American investment in the Italian postwar economy by establishing a mutually agreed framework of legal protection for commercial activities and investments of United States nationals in Italy[3].

As reflected in Article V of the Supplement, the Government of Italy was particularly interested in promoting new investment in its Southern Region, the Mezzogiorno, an historically underdeveloped area which includes the island of Sicily[4]. Toward that end, the Government of Italy enacted incentives to encourage foreign investment in that Region and created a specific ministry within the national Government to administer these programs and otherwise to encourage development in the Mezzogiorno[5].

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[1] Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic, signed at Rome, 2 February 1948, entered into force, 26 July 1949. *TIAS* 1965; 79 *UNTS* 171 (Ann. 1).

[2] Agreement Supplementing the Treaty of Friendship, Commerce and Navigation of 2 February 1948, signed at Washington, 26 September 1951, entered into force, 2 March 1961. *TIAS* 4685; 404 *UNTS* 326 (Ann. 2).

[3] The importance of the Treaty to the Government of Italy as one means of encouraging United States investment in Italy is highlighted in the attached Reports from the Italian Parliament. Chamber of Deputies, *Parliamentary Proceedings, Documents — Bills and Reports*, N. 246-A, p. 4, Presented to the Office of the President on 2 March 1949 (Ann. 3); Senate of the Republic, Legislature III, 291st Session, Assembly, p. 13758, 19 July 1960 (Ann. 4). *See also*, discussion, *infra*, pp. 69-70, on Italian parliamentary consideration.

[4] Map of Italy, highlighting the Mezzogiorno Region (Ann. 5).

[5] *The Foreign Investor's Digest of Italian Corporate Law*, pp. 245-254 (1963) (Ann. 6).

Section 2. Raytheon's and Machlett's Investment in ELSI

Raytheon Company ("Raytheon"), a United States electronics manufacturer incorporated in Delaware[1], was a participant in this postwar investment activity[2]. In 1952, Raytheon entered into a licensing and technical assistance agreement with an Italian company based in Genoa, Fabbrica Italiana Raddrizzatori Apparecchi Radiologici (FIRAR)[3]. Subsequently, the owners of FIRAR decided to transfer its business to a relatively new company located in Palermo, Sicily — Elettronica Sicula, S.p.A. ("ELSI", — and proposed that Raytheon become a shareholder in ELSI. In Raytheon's view, ELSI had very good prospects of success, notwithstanding its location in a remote and underdeveloped area. ELSI was supported by an experienced and successful Italian partner, the Moro Group, as well as by the strong government policy of support for business development in the Mezzogiorno[4]. Moreover, the Italian Government offered and publicized investment incentives to companies investing in the Mezzogiorno[5]. Raytheon acquired a 14 per cent shareholder interest in ELSI in 1956[6].

From 1956 through 1967, Raytheon invested some 7.421 billion[7] lire (US$11,899,300)[8] in ELSI, ultimately acquiring 99.16 per cent of its shares[9]. Raytheon also guaranteed over 5 billion lire (US$8 million) of loans to ELSI by various Italian banks[10]. Machlett Laboratories, Inc., a United States corporation incorporated in Connecticut specializing in the manufacture of X-ray tubes[11], acquired the remainder of ELSI's shares in April 1967, investing 34 million lire (US$54,100) in ELSI[12].

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[1] Raytheon Company Certificate of Good Standing, State of Delaware, 22 December 1986 (Ann. 7); introductory pages from 1985 *Raytheon Company Annual Report* (Ann. 8); Affidavit of Charles F. Adams, Finance Committee Chairman and Director, Raytheon Company, para. 9, 17 April 1987 (Ann. 9).

[2] Annex 9, paras. 10-12.

[3] Manufacturing and Sales Agreement between Raytheon Manufacturing Company and Fabbrica Italiana Raddrizzatori Apparecchi Radiologici, 18 July 1952 (Ann. 10).

[4] Ann. 9, paras. 10 and 15.

[5] Ann. 6; *see also* Ann. 9, paras. 15-16.

[6] Letter of Participation from Raytheon Manufacturing Company to Elettronica Sicula, S.p.A., dated 21 October 1955, revised 15 March 1956 (Ann. 11).

[7] Throughout this document, the term "billion" refers to 1,000 million.

[8] These are the actual United States dollar and Italian lire amounts of this investment. In the following discussion, where it has been necessary to determine a dollar amount based on an actual lire figure, or vice versa, this Memorial uses an exchange rate of United States $1.00 to Italian L.625, the generally prevailing exchange rate from 1967 through 1971. Selected United States Dollar-Italian Lire Conversion Rates from *The Wall Street Journal* (for dates 29 March 1968, 19 April 1968, 29 April 1968, 30 June 1971) and *The Washington Post* (for dates 1 April 1968, 11 July 1969, 24 January 1974) (Ann. 12). The Affidavit of Arthur Schene, former Raytheon Vice President-Controller (Ann. 13) provides complete details of relevant investment and statistical information about ELSI's financial history and other matters relevant to the claims of the United States.

[9] Ann. 9, paras. 12-13; Ann. 13, para. 7, and Schedule A; Affidavit of Herbert Deitcher, Vice President and Treasurer, Raytheon Company, para. 2 and Exhibit A, 6 January 1987 (Ann. 14); *see also*, Affidavit of John D. Clare, former Chairman, Raytheon Europe International Company, para. 9 and Exhibit A, 10 January 1987 (Ann. 15). ELSI was renamed "Raytheon-ELSI" in 1963 to reflect Raytheon's ownership of a majority of ELSI's shares. This Memorial will refer to the corporation as "ELSI" throughout.

[10] Ann. 13, Schedule 12.

[11] The Machlett Laboratories, Inc., Certificate of Good Standing, State of Connecticut, 26 December 1986 (Ann. 16).

[12] Ann. 9, para. 14; Ann. 13, paras. 7 and 21 and Schedule A; Ann. 14, para. 2 and Exhibit A.

In addition to their direct investment, Raytheon and Machlett supported ELSI by providing patents, licenses and other technical assistance, providing management, marketing and other expertise, and developing profitable business opportunities for ELSI, including a lucrative contract to produce electronic tubes for the North Atlantic Treaty Organization (Nato) Hawk Missile system[1].

Section 3. The Development of ELSI to 1967

By 1967, ELSI had become a significant manufacturer of sophisticated electronic components and equipment and a major employer in Sicily, with a skilled work force of slightly under 900 employees, a large, modern, fully-equipped plant in Palermo, a reputation for quality products, and a significant volume of sales and export earnings[2].

ELSI had five major product lines: microwave tubes, cathode-ray tubes, semiconductor rectifiers, X-ray tubes, and surge arresters[3]. Using Raytheon technology, ELSI produced microwave tubes, which generate high-frequency electromagnetic waves, for Nato Hawk Missile systems and other uses, including telecommunications, radar, and industrial heating. ELSI's cathode-ray tubes were TV picture tubes, the most complex component in televisions. Its semiconductor rectifiers, which convert alternating current to direct current, were used in X-ray equipment, radio and television stations, electrostatic filters, and domestic appliances. Using Machlett technology, ELSI produced X-ray tubes, primarily for medical use, and surge arresters, which protect against overvoltage surges in telephone lines, cables and terminal lines[4].

ELSI sold these products throughout Europe, the United States, Japan, and other international markets. For each of the fiscal years ending 30 September 1965 and 30 September 1966, ELSI's sales totalled over 8 billion lire (US$12,800,000)[5]. In addition to goods sold to Nato, just under 30 per cent of the sales during this two-year period represented exports from Italy[6].

ELSI thus became an established business. It did not, however, become self-sufficient. During fiscal years 1964 through 1966, ELSI made an operating profit, but this profit was insufficient to offset its debt expense or accumulated losses, and no dividends were ever paid to its shareholders[7]. As of 30 September 1966, the accumulated accounting losses, as shown on the balance sheet, were some 2 billion lire (US$3,200,000)[8].

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[1] Ann. 9, para. 17.

[2] Ann. 13, paras. 8, 9 and 12; "A New Industry in an Ancient Land", Raytheon-ELSI, S.p.A., Brochure, October 1963 (Ann. 18); Sales brochure, Raytheon-ELSI, S.p.A., (Ann. 19); Aerial photograph of Elettronica Sicula, S.p.A., plant in Palermo, Sicily, 1962 (Ann. 20). Affidavit of Rico A. Merluzzo, former Director of Planning, Raytheon-ELSI, S.p.A., para. 8, 17 April 1987 (Ann. 21). "Project for the Financing and Reorganisation [sic] of the Company", 1967 Report prepared by Raytheon-ELSI, S.p.A., pp. 20-21 (Ann. 22); Affidavit of Dominic A. Nett, former Controller, Raytheon-ELSI, S.p.A., 17 April 1987 (Ann. 30).

[3] Ann. 21, para. 8. These product lines are pictured and described in Anns. 18 and 19.

[4] Ann. 15, para. 11; Ann. 21, para. 8.

[5] Ann. 13, Schedule B3; Ann. 22, pp. 10-21. ELSI's fiscal year was 1 October-30 September. Unless otherwise noted, fiscal year data will be given based on the accounting methods used in preparing ELSI's accounting records.

[6] Ann. 22, pp. 206-213, *infra*.

[7] Ann. 13, Schedule B3; Ann. 15, para. 12.

[8] Ann. 13, Schedule B1.

Section 4. Final Efforts at Self-Sufficiency

In February 1967, Raytheon embarked upon a major effort to make ELSI self-sufficient. It designated Mr. John D. Clare, Raytheon Vice President and General Manager of its European management subsidiary Raytheon Europe International Company, to be ELSI's Chairman and directed him to determine and implement appropriate steps to improve ELSI's financial performance[1]. Raytheon and Machlett also designated other highly qualified individuals to assist ELSI[2]. Some of these individuals worked full-time and others on a consultant basis to provide ELSI their specialized financial, managerial, and technical expertise. Raytheon also provided over 4,000 million lire (US$6,400,000) to ELSI in recapitalization and guaranteed credit[3].

This 1967 effort focused in part on improving the efficiency of administration and operations at the ELSI plant in Palermo. By December 1967, major steps had successfully been taken to upgrade plant facilities and operations, including a comprehensive inventory, implementation of improved quality, production, and scrap-control systems, establishment of a major worker training program, and the restructuring of production facilities[4].

In Raytheon's view, however, it was most critical to ELSI's self-sufficiency and hence survival to develop further its product base, personnel, and place in the Italian economy. Raytheon management had concluded that, as an American-owned firm, ELSI was at a competitive disadvantage in seeking to develop Italian markets[5]. This goal therefore entailed several interrelated objectives: to develop new products and markets in order to expand and diversify its business and make full use of its operating capacity; to secure an Italian partner with economic power and influence; and to be assured of the critical interest and support of the national and regional governments[6]. The latter was particularly important because of the Italian Government's dominant role as a customer and supplier in numerous markets crucial to ELSI's operations and success, including the electronics, telecommunications, health care, military supplies, information and transportation systems, and the Italian banking system[7].

ELSI sought to benefit from Italy's Mezzogiorno incentive laws, especially (1) the so-called "30 per cent law" which required 30 per cent of government agency supply and job contracts to be made from companies located in the Messogiorno, and (2) from transportation subsidies for businesses in the Mezzogiorno[8]. The 30 per cent law was especially important to ELSI's X-ray tube business, since government-controlled hospitals were purchasing X-ray tubes from outside Italy which could have been purchased within Italy from ELSI in the Mezzogiorno[9]. The transportation subsidies were especially important to the cathode-ray tube business, because the large size and weight of ELSI's products made transportation costs particularly expensive[1].

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[1] Ann. 9, paras. 20-22; Ann. 15, paras. 14-15; Affidavit of Joseph A. Scopelliti, former Chief Financial Officer and Controller, Raytheon Company, para. 2, 1 April 1987 (Ann. 17).

[2] Ann. 9, para. 21; Ann. 15, paras. 33-35; Ann. 17, para. 2; Ann. 21 paras. 5-8.

[3] Ann. 9, para. 28; Ann. 14, para. 2 and Exhibit A; Ann. 15, para. 21.

[4] Ann. 15, para. 36; Ann. 21, paras. 9-15.

[5] Ann. 17, paras. 3-4.

[6] Ann. 9, paras. 24-25; Ann. 15, para. 18; Ann. 17, paras. 4-5.

[7] Ann. 9, paras. 24-25; Ann. 17, para. 3. Moreover, the policies set by the Government of Italy in any of these areas directly affected ELSI's operations. For example, in March 1967, the Chamber of Deputies approved the first five-year plan for the Italian economy, which included detailed plans for the development of Italian industry. *Quarterly Economic Review Annual Supplement*, The Economist Intelligence Unit (1967) (Ann. 23).

[8] Ann. 6; Ann. 15, paras. 28-31; Ann. 17, para. 4.

[9] Ann. 15, paras. 28-31.

Many important potential new markets for ELSI products and many of ELSI's suppliers were government-controlled, primarily by the Istituto per la Ricostruzione Industriale ("IRI")[2]. IRI, which had been created in 1933 to take emergency control of banks during Italy's banking crisis, had developed into a permanent holding company with extensive and wide-ranging commercial interests, dominating, among other things, the telecommunications, electronics and engineering markets[3]. IRI has been described as:

> "Europe's largest market-disciplined public enterprise group . . . It owns three of the largest national banks, and accounted for one-fifth of the total of Italian bank deposits. In service companies it owns Alitalia, the main shipping companies, runs Italian radio and television (RAI), the larger part of the Italian telephone system, and has built over half the renowned national motorway network. In manufacturing it produces some three-fifths of Italian steel, over three-quarters of ships built, owns the Alfa-Romeo motor car company, and has an important stake in other national engineering sectors[4]."

By the end of 1967, IRI had a majority shareholder interest valued at over 1,206 billion lire (US$1,929,600,000) in some 139 companies, which employed some 290,000 persons and had combined sales of 2,230 billion lire (US$3,568,000,000)[5].

Because of IRI's importance and the importance of a strong commercial relationship with the Government, Mr. Clare and other senior Raytheon officials held some 70 meetings with Italian leaders between February 1967 and March 1968[6]. In these meetings — with cabinet-level officials of the national Government and the Sicilian Region, as well as representatives of IRI, the Ente Siciliano per la Produzione Industriale ("ESPI") (the Sicilian Government industrial organization responsible for the promotion of local development), and the private sector — ELSI's management and shareholders attempted to find ELSI a strategic Italian partner and explore the possibilities of other governmental support[7]. In particular, Raytheon and ELSI developed and presented to Italian and Sicilian officials numerous specific proposals of ways for the Italian Government to meet its goals of industrial development in the Mezzogiorno through a partnership with ELSI and support for ELSI's development of new products and markets[8].

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[1] Ann. 15, para. 19.

[2] Ann. 17, paras. 3-4.

[3] Ann. 17, para. 3. Raytheon had previously established a successful partnership with IRI and the private firm FIAT through their joint ownership of Selenia, an electronics company on the Italian mainland. Raytheon supplied Selenia managerial and technical expertise; IRI furnished Selenia access to markets controlled by IRI-affiliated companies and the Italian Government. Ann. 9, para. 25. Raytheon therefore had reason to believe that a similar co-operative relationship could be established with the Italian industrial community, and with IRI in particular. *Ibid.*, paras. 24-25.

[4] Ann. 25, p. 47.

[5] Ann. 23; I.R.I., Istituto per la Ricostruzione Industriale, 1967 *Annual Report*, pp. 38-39, 65 (Ann. 24); *The State As Entrepreneur*, pp. 45-49, 56-60 (S. Holland, ed., 1972) (Ann. 25).

[6] Ann. 9, paras. 29-31; Ann. 15, paras. 22-46; Ann. 17, para. 5.

[7] Ann. 9, paras. 29-30; Ann. 15; paras. 23-32 and 37-44; Ann. 17, paras. 3-5.

[8] Ann. 9, paras. 22-23; Ann. 13, para. 13; Ann. 15, para. 20. ELSI's detailed proposals for its future development are contained in Annex 22. As explained by Charles F. Adams:

> "If ELSI was going to be successful, it had no choice but to obtain a major Italian partner. After La Centrale decreased its ownership of ELSI in the early 1960s, ELSI was viewed as an 'American' Company. We had learned by 1967 that, in order for a

At first, Italy's response was encouraging. ESPI's President and the President of the Sicilian Region were enthusiastic about a partnership with ELSI[1]. Similarly, other Italian officials, including senior officials at the Ministries of the Treasury and of Industry, Commerce, and Crafts, expressed their continuing support for the official policy of Mezzogiorno development and their specific interest in helping ELSI[2].

Notwithstanding this support for ELSI from representatives of the regional and national governments, IRI was not prepared to invest in or consider other commercial relationships with ELSI[3]. On 4 January 1968, a senior IRI official confirmed that IRI was interested in furthering its own activities in the electronics field[4]. IRI's specific plans at that time were apparently still being developed; the official said that IRI would not enter into a relationship with ELSI at that time, but might be willing to reconsider the decision later, perhaps in a year[5]. ELSI would require additional capital contributions from its shareholders, a commitment they could not make unless there were good prospects that ELSI would become financially self-sufficient[6].

> company to be successful in Italy, it had to be viewed as 'Italian' and have an 'Italian link' or 'contact', which would provide access to important Italian markets and the contacts necessary to obtain vital support from the Italian Government. The only way for ELSI to be viewed as an Italian company and have that necessary link was to acquire a major Italian partner, such as IRI and Ente Siciliano per la Produzione Industriale ('ESPI'), the Sicilian governmental entity responsible for funding and promoting local development." (Ann. 9, para. 24.)

[1] Ann. 15, paras. 24, 26 and 44, and Exhibits A and B. Because ELSI was a large employer, and because Sicily hoped to develop its electronics industry, the Sicilian Region had a strong interest in keeping ELSI operating. Ann. 15, paras. 24, 26 and 27.

[2] Ann. 15, paras. 25-30.

[3] Ann. 9, para. 30; Ann. 15, paras. 31-38.

[4] Ann. 9, para. 30; Ann. 15, paras. 38-40 and Exhibit C.

[5] *Ibid.* Sicilian officials were not prepared to enter a financial relationship with ELSI without IRI's support. Ann. 9, para. 31; Ann. 15, paras. 37-38.

[6] Ann. 15, para. 21. They made this business judgment well known to the Government of Italy. Ann. 9, para. 28; Ann. 15, para. 21.

CHAPTER II

INTERVENTION BY THE GOVERNMENT OF ITALY TO PREVENT THE ORDERLY LIQUIDATION OF ELSI

Raytheon and Machlett decided in March 1968 to close ELSI and take it through an orderly liquidation. However, the Mayor of Palermo, acting as an official of the Italian Government, requisitioned ELSI's assets to prevent the liquidation. The President of Sicily threatened that the requisition would be maintained indefinitely unless Raytheon contributed additional capital, kept the plant open and unilaterally absorbed ELSI's losses. With its assets being held by the Italian Government, and debts coming due, ELSI had no choice but to declare bankruptcy.

Section 1. The Decision to Liquidate ELSI

Because their discussions with leaders of the Italian Government and others in Italy did not appear to be leading to a successful conclusion, ELSI's shareholders began seriously to plan to close and liquidate ELSI to minimize their losses[1]. They had made a business judgment not to infuse additional capital into ELSI if ELSI could not be made self-sufficient, since it appeared that further investments, like earlier investments, would be lost[2]. Without an additional capital contribution, the shareholders would eventually have no alternative under Italian law but to liquidate[3].

Raytheon's management and shareholders continued to meet with Italian officials through the first quarter of 1968, stressing that ELSI's shareholders were considering closing the plant[4]. Despite periodic mention of possible co-operation at some future time[5], Italian agencies were unwilling to finalize any plan to keep ELSI in business[6].

To prepare for ELSI's liquidation, therefore, Raytheon sent its Vice President, Joseph Oppenheim, to Palermo to be ELSI's Chairman. Mr. Oppenheim had the strong financial and market expertise needed to conduct the liquidation, and was assisted by similarly experienced senior management officials[7].

Under a comprehensive liquidation plan prepared by Raytheon Europe's Controller Joseph Scopelliti along with Mr. Oppenheim and others, ELSI would maintain a limited operation to complete work-in-progress and fill existing purchase orders, thereby preserving it as a going concern and making it more attractive to potential purchasers. All possible steps were to be taken to maintain good relationships with ELSI's customers and suppliers so that potential purchasers could be offered ELSI's businesses as a going concern, including its established name and reputation, customer and supplier relationships, and the necessary patent and trademark licenses and technical assistance from Raytheon and Machlett, in addition to the equipment and other tangible assets[1]. ELSI's business would be offered for sale both as a total package and as individual product lines to maximize the price realized under the liquidation[2].

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[1] Ann. 9, paras. 32-35; Ann. 13, para. 13; Ann. 14, para. 3; Ann. 17, paras. 5-14.

[2] Ann. 9, para. 20; Ann. 15, para. 21; Ann. 26, para. 4.

[3] Ann. 15, paras. 42-43; Affidavit of Avv. Giuseppe Bisconti, Studio Legale Bisconti, Rome, para. 4, 11 December 1986 (Ann. 26).

[4] Ann. 13, para. 13; Ann. 15, para. 43.

[5] E.g., Ann. 15, para. 44 and Exhibit B.

[6] Ann. 9, para. 30; Ann. 15, para. 42.

[7] Ann. 9, paras. 32-35; Ann. 15, paras. 49-53; Ann. 26, para. 5.

As of 31 March 1968, the book value of ELSI's assets was 17.05 billion lire (US$27,200,000)[3]. ELSI's financial condition would, of course, have been stronger had it received the benefits of the widely publicized Mezzogiorno incentive laws and had it been able to expand its position in the Italian market[4]. This book value represented a fair measure of the value of ELSI's assets on a going concern basis[5]. On the other hand, for internal planning purposes, Raytheon estimated that a guaranteed minimum of 10.84 billion lire (US$17,280,000) could be realized on a "quick sale" basis[6].

ELSI's liabilities, on the other hand, totalled some 16.66 billion lire (US$26,656,000)[7]. Thus, from the sale of ELSI's assets on a going concern basis, enough money would have been realized to pay off ELSI's liabilities in full, including the amounts owed by ELSI to Raytheon, with a 391 million lire (US$625,600) surplus to Raytheon and Machlett as a small return on their investment[8].

At worst, if only 10.84 billion lire were realized, Raytheon intended to use the proceeds from the sale of ELSI's assets to pay in full ELSI's preferred and secured creditors and all of ELSI's smaller unsecured creditors[9]. Raytheon reasonably anticipated, however, that the bank creditors with large unsecured, unguaranteed loans would quickly settle their claims at no more than 50 per cent of this value as part of the orderly liquidation, as such a settlement would guarantee prompt and substantial payment, as compared with receiving little or nothing in bankruptcy[10]. In this event, the liquidation would cost Raytheon some 3.79 billion lire (US$6,082,600), for partial recovery of amounts owed to it on open account and to pay off the remainder of ELSI's guaranteed loans[1].

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[1] Ann. 9; Ann. 15, paras. 49-53.

[2] Ann. 15, para. 51; Ann. 17, para. 12; Ann. 26, para. 5. ELSI's product lines are pictured and described in Annex 18 and Annex 19. An extensive exposition of the liquidation plan is contained in Ann. 17, paras. 6-14.

[3] Ann. 13, Sched. B1.

[4] Ann. 17, paras. 3-4.

[5] *Ibid.*, para. 15.

[6] Ann. 17, para. 16 and Schedules C1, C2, C3 and C4; Ann. 17, paras. 7-10 and Exhibit A. This conservative valuation, personally prepared by Raytheon Europe's Chief Financial Officer and Controller, deliberately omitted the significant intangible value of ELSI's businesses, including:

> "[I]ts excellent reputation as a producer of reliable electronic products, and its experience and know-how in the electronics industry, its supplier and customer lists and market reputation, patent licenses and other rights to technology supplied by Raytheon and Machlett, and other contracts. Moreover, in ELSI's case, its products were backed by the strong names, technology and reputations of Raytheon and Machlett Laboratories, Inc., and it had established products with a reputation for quality. In our judgment, these items were of significant value and interest to potential buyers." (Ann. 17, para. 8.)

The plan was conservative to reflect "the minimum prospects of recovery of values which we could be sure of, in order to ensure an orderly liquidation process". *Ibid.*

[7] Ann. 13, Schedule E ("Total Adjusted Claims"). This included some 5.71 billion lire (US$9,100,000) in principal and interest on loans guaranteed by Raytheon; some 1.14 billion lire (US$1,830,000) in amounts owed to Raytheon by ELSI; and some 9.81 billion lire (US$15,696,000) in other liabilities and expenses, including amounts required for severance pay, taxes, and other expenses of the liquidation. *Ibid.*

[8] *Ibid.*, Schedule E; *see also*, Table at p. 108, *infra*.

[9] Ann. 13, Schedule F; Annex 17, para. 14.

[10] Ann. 17. As described *infra*, at p. 58, these banks were willing to settle at 50 per cent or less as part of an overall voluntary settlement. *See* Ann. 26, para. 16; Affidavit of Joseph Oppenheim, former Chairman of the Board, Raytheon-ELSI S.p.A., 22 September 1971

Raytheon's Italian counsel, Avv. Giuseppe Bisconti, advised ELSI and its shareholders in March 1968 that an orderly liquidation was both legally possible and prudent in view of ELSI's financial situation[2]. With preparations for liquidation completed, and no apparent prospect of developing a co-operative business relationship with Italian authorities, ELSI's Board of Directors voted on 16 March 1968 to cease full-scale production on 29 March 1968 and liquidate the company[3]. On 28 March 1968 ELSI's shareholders voted to affirm this decision[4].

Section 2. The Requisition of ELSI's Assets

On 27 March 1968, the President of the Sicilian Region threatened four officers of Raytheon Europe and ELSI that the Government of Italy would seize ELSI's plant and related assets if its shareholders proceeded with their plan for an orderly liquidation[5]. On 29 March 1968, ELSI's management, acting pursuant to the decisions of ELSI's Board and shareholders, nonetheless determined that it had no alternative but to proceed with the liquidation plan[6]. That night, the General Manager of the Ministry of Industry, Commerce and Crafts, speaking for the Prime Minister of Italy, asked Mr. Clare to delay closing ELSI, stating that Raytheon would incur the Prime Minister's severe displeasure if the plant were

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(Ann. 27); Affidavit of Charles H. Resnick, General Counsel, Raytheon Company, 8 September 1971 (Ann. 28); Affidavit of Avv. Giuseppe Bisconti, Studio Legale Bisconti, Rome, 20 August 1971 (Ann. 29). In fact, most unsecured creditors waited 17 years until the bankruptcy closed and then received less than 1 per cent of their claims because ELSI was forced to declare bankruptcy. *See* Ann. 26, Attachment. Raytheon and its subsidiaries with claims against ELSI were willing to accept settlements of 50 per cent or less from ELSI as part of the orderly liquidation. Ann. 13, Schedule D; Ann. 17, para. 14.

[1] Ann. 13, para. 16 and Schedule F, and detail at Schedules H4, I2 and J. As detailed *ibid.*, Schedule J, Raytheon and its wholly owned subsidiary were owed 1.14 billion lire (US$1,830,000) for goods and services rendered on open account. *See also*, Ann. 14, para. 3; Table at p. 108, *infra*.

[2] Ann. 26, para. 4. Avv. Bisconti explains:

> "I advised Raytheon about the Italian legal requirements for an orderly liquidation of an Italian company. Under Italian law, in particular under Article 2447 of the Italian Civil Code, when a company's capital is depleted below a statutory minimum amount (at the relevant time, the statutory minimum was 1 million Italian Lire), the directors are required to call a shareholders' meeting in order that the shareholders bring the capital back at least up to the required statutory minimum. If the shareholders fail to take the required action, the company is dissolved as a matter of law under Article 2448 of the Italian Civil Code. ELSI's capital, after taking into account losses to date at that time, was well in excess of the minimum statutory requirement. It was therefore possible under Italian law for ELSI's shareholders to plan an orderly liquidation of the company." *(Ibid.)*

ELSI would not at this point have been considered bankrupt under Italian law, as it was still able to pay its debts as they became due. Only later, when Italy had seized ELSI's assets to prevent the liquidation, were ELSI's Directors forced to file a petition in bankruptcy under Italian law. Ann. 26, para. 12, and discussion *infra*, pp. 56-57.

[3] Minutes of Raytheon-ELSI, S.p.A., Board of Directors Meeting, 16 March 1968 (Ann. 31).

[4] Minutes of Raytheon-ELSI, S.p.A., Shareholders Meeting, 28 March 1968 (Ann. 32).

[5] On 27 March 1968, he stated that "the plant would almost certainly be requisitioned" if ELSI sent out letters of dismissal pursuant to the decisions of its Board of Directors. Ann. 15, paras. 56-57 and Exhibit F.

[6] Ann. 15, para. 58.

closed[1]. After consulting with Raytheon's President, Mr. Clare and his staff sent dismissal letters late the night of 29 March 1968[2].

On 31 March 1968, at 6.45 a.m., the President of the Sicilian Region met with ELSI's Managing Director to inform him of the Italian Government's plan for ELSI. According to the President, the Italian Prime Minister had said that the Government of Italy would requisition ELSI's plant in order to prevent the liquidation[3]. He stated that an ESPI-affiliated company would be formed to run ELSI until IRI could acquire ELSI's assets[4]. In addition to their plan ultimately to acquire the assets, Italian officials did not want to allow ELSI to close on the schedule determined by ELSI's directors and shareholders. National elections were scheduled for May 1968, and government officials told Raytheon repeatedly that they did not want the plant to close, with resulting large-scale unemployment shortly before an election[5].

Accordingly, on 1 April 1968 the Mayor of Palermo issued an order, effective immediately, requisitioning ELSI's plant and related tangible assets for a period of six months[6]. The order was based on an 1865 law that bestowed extraordinary power on Italian administrative authorities to "dispose of private property" for reasons of "grave public necessity"[7]. Among the stated reasons for the requisition were that "the local press is taking a great interest in the situation and . . . is being very critical toward the authorities and is accusing them of indifference to this serious civic problem" and that "there is a grave public necessity and urgency to protect the general economic public interest (already seriously compromised) and public order"[8].

On 2 April 1968, ELSI's management relinquished control of ELSI's plant and assets to the Mayor on the advice of local counsel[9]. As a result of the requisition, ELSI's owners and management were, as a matter of law, deprived of control over and the right to dispose of ELSI's assets, and could not proceed with the liquidation[10]. ELSI's relationships with its suppliers and customers were cut off abruptly, in-process inventories could not be converted to finished products, and neither ELSI's goods nor its other assets could be sold[11].

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[1] Ann. 15, paras. 58-59 and Exhibit G.

[2] Ann. 15, para. 60.

[3] *Ibid.*, paras. 61-62 and Exhibit H.

[4] *Ibid.* According to the President, IRI preferred to acquire ELSI's assets for its own use rather than to work with Raytheon to keep ELSI open because IRI did not want to enter a partnership with Raytheon.

[5] Ann. 15, paras. 46 and 58; Ann. 26, para. 6.

[6] Requisition Decree, Mayor of the Municipality of Palermo, 1 April 1968 (Ann. 33).

[7] Ann. 26, para. 7; Article 7 of Law of 20 March 1865, No. 2248, Attachment E (Ann. 34). The requisition was based indirectly on a 1955 law establishing the Mayor's authority to issue "emergency and urgent orders" of this character. Presidential Decree of 29 October 1955, N. 6 (Ann. 35).

[8] Ann. 33.

[9] Ann. 21, paras. 18-19; Ann. 26, para. 8.

[10] Ann. 26, para. 7.

[11] Ann. 26, para. 7. The devastating effect of the requisition is described by former Raytheon Controller Joseph Scopelliti in Annex 17, paragraph 17:

> "On April 1, however, the Mayor of Palermo requisitioned ELSI's plant and equipment. With the requisition of ELSI's assets, it was impossible to invite potential buyers to view ELSI's facilities and discuss the sale of the businesses. Moreover, in-process inventories could not be converted to finished products. Suppliers and customers were thus suddenly and abruptly suspended. ELSI's hard-earned market position was quickly taken away by competitors. Not only were the bulk of ELSI's assets suddenly not disposable, but it did not appear likely that Raytheon would ever regain control of them. The requisition action ended our chances of completing an orderly liquidation and obtaining a fair price for ELSI's businesses and assets."

Although he had legal control of the plant, the Mayor did not attempt to reopen and operate it. Rather, Italian authorities allowed ELSI's former workers to occupy the plant[1]. ELSI representatives immediately sent cables asking the Mayor and other Italian authorities to revoke the requisition, but received no response[2]. On 9 April ELSI formally petitioned the Mayor to lift his order, arguing that the requisition was illegal and would only delay the solution of the problem and create false hopes among ELSI workers. The Mayor did not respond[3]. On 19 April, ELSI appealed the Mayor's order to the Prefect of Palermo, an official of the Italian Government empowered to hear appeals of decisions by local government officials[4]. ELSI argued that the requisition was illegal and arbitrary, and that the Mayor acted outside his authority in requisitioning the plant[5]. Although the Prefect ultimately held that the Mayor had acted unlawfully, he delayed issuing this decision for 16 months, until after IRI had completed its acquisition of ELSI's plant and assets[6].

After having requisitioned ELSI's plant and other tangible assets, Italian authorities pressured Raytheon to reopen ELSI at Raytheon's own additional expense. On 19 April 1968, the President of the Sicilian Region told Raytheon representatives that the regional and national governments had agreed to form a management company to operate ELSI. He proposed that Raytheon participate as a minority or equal partner with the Government, contributing substantial new capital to the venture and assuming complete responsibility for ELSI's past debts. He proposed that the new management company pay only a token rental (one Italian lira) for ELSI's facilities. He indicated that this arrangement would keep ELSI workers temporarily employed until IRI set up its own plant in Palermo, emphasizing that Sicily had a "single goal, to keep the workers employed"[7].

The following day, the President of the Sicilian Region delivered to Mr. Oppenheim a memorandum stating in part:

> "On the premise that the intent of [Raytheon] is that of liquidating ELSI, I shall herein explain the reasons why it is absolutely impossible that this can take place for the time being.
>
> (1) Nobody in Italy shall purchase, that is to say IRI shall not purchase neither for a low nor for a high price, the Region shall not purchase, private enterprise shall not purchase. Let me add that the Region and IRI and anybody else who has any possibility to influence the market will refuse in the most absolute manner to favor any sale while the plant is closed.
>
> (2) The banks which have outstanding credits for approximately 16 billion Lire, cannot and will not accept any settlement even at the cost of dragging the Company into litigation on an international level . . .
>
> . . . .

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[1] Ann. 21, paras. 19-21. So far as Raytheon can determine, the workers continued to have actual custody of the plant during the requisition and consequent bankruptcy until the plant was finally reopened. *Ibid.*, paras. 20-21; Ann. 26, paras. 16-17.

[2] Ann. 26, para. 9.

[3] *Ibid.*

[4] Appeal by Raytheon-ELSI, S.p.A., to the Prefect of Palermo of Requisition Decree of the Mayor of Palermo, 19 April 1968 (Ann. 36); *see also*, Ann. 26, para. 9.

[5] *Ibid.*, Ann. 36.

[6] *See infra*, pp. 64-65. This delay in ruling appears to have been unprecedented. Ann. 26, para. 10.

[7] Minutes of Meetings in Palermo between Messrs. Joseph Oppenheim, Howard Hensleigh, Stanley Hillyer and President Carollo of Sicily, 19/20 April 1968 (Ann. 37); Memorandum from the President of the Sicilian Region, 20 April 1968 (Ann. 38).

> It is obvious that every attempt will be made (even at the cost of long litigation) to obtain from Raytheon what is owed by ELSI.
>
> (4) In the event that the plant shall be kept closed, waiting for Italian buyers who will never materialize, the requisition shall be maintained at least until the courts will have resolved the case. Months shall go by[1]."

The memorandum set forth a plan for keeping ELSI open temporarily, aiming toward the liquidation of ELSI at a later time. After consulting with Raytheon officials, Mr. Oppenheim formally rejected the proposal on 26 April, writing to the President of the Sicilian Region:

> "Regrettably your proposal to form a management company was a temporary caretaker measure which would not solve the fundamental problem, namely keeping ELSI in Sicily and making it a viable and vital industry. For this reason, we find it impossible to accept it.
>
> It is sad to see that after all our investment over the years, and all our appeals during the last year to public agencies and private industry to join us in putting new blood into a Sicilian industry, the only responses were the requisitioning of our plant and a proposal which would only aggravate ELSI's critical financial condition.
>
> We are therefore forced to file a voluntary petition for bankruptcy, as required by Italian law ...[2]"

Section 3. The Resulting Bankruptcy

The President's memorandum made clear that the requisition of ELSI's assets would continue indefinitely. Deprived of the income which the sale of its assets would produce, ELSI was no longer able to meet its financial obligations when due. Its attorney advised the Board of Directors to file for bankruptcy or face possible personal liability for company debts[3]. On 25 April 1968, the Board of

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[1] Ann. 38.

[2] Letter from Joseph Oppenheim, Chairman of the Board, Raytheon-ELSI, S.p.A., to Hon. Vincenzo Carollo, President of the Sicilian Region, 26 April 1968 (Ann. 39).

[3] Ann. 9, para. 36; Ann. 17, para. 19; Ann. 26, para. 12; Ann. 39; Affidavit of Charles H. Resnick, General Counsel, Raytheon Company, paras. 4-5, 19 January 1987 (Ann. 40). Avv. Bisconti details in his affidavit why the requisition forced ELSI to declare bankruptcy:

> "On the day after we filed the appeal to the Prefect, President Carollo of Sicily delivered a written memorandum to Raytheon threatening that the requisition would be prolonged indefinitely unless Raytheon abandoned its plans to close ELSI. I was informed of this immediately by Mr. Oppenheim. The disposability of ELSI's assets was a fundamental prerequisite to ELSI's shareholders' ability to take ELSI through an orderly liquidation; they were relying on the proceeds of these sales in large part to pay ELSI's creditors in an orderly manner. Without the ability to dispose of its assets, ELSI would not have the liquidity needed to pay its debts as they came due and therefore would soon become technically insolvent under Italian law.
>
> All indications from the Italian Government were that the requisition would not be quashed in the near term. Because ELSI's illiquidity and its consequent inability to meet its obligations when due were caused by the requisition, and would continue, I advised ELSI's directors that they had an obligation to file a petition for a declaration of bankruptcy, failing which they could be held personally liable pursuant to Article 217 of the Bankruptcy Law, Royal Decree of March 16, 1942, No. 267. I had not previously contemplated such a step, since I saw no possibility of its being required by ELSI's financial situation prior to the requisition. Given the requisition, however, and the consequent inability to dispose of ELSI's plant and equipment, it was evident that ELSI would no longer be in a position to satisfy regularly its obligations and pay its debts as they came due." (Ann. 26, paras. 11 and 12.)

The text of Article 217 of the Bankruptcy Law of Italy, Royal Decree of 16 March 1942, No. 267, is attached as Annex 41.

Directors accepted this advice and voted to file a voluntary petition in bankruptcy[1]. The bankruptcy petition, which was filed on 26 April 1968, with the Civil and Criminal Tribunal of Palermo, stated in part:

> "On April 1, 1968, the Mayor of Palermo, alleging reasons of serious necessity and urgency, ordered the requisition of the plant and of the equipment of the Company. Such measure, which is considered by the Company illegal and arbitrary and moreover unfit to resolve the economic problem of the Company and of the Sicilian industry, has deprived the Company of the freedom to dispose of its assets for a long period, annihilating every possibility for the orderly disposition of the corporate assets; the negotiations then in course for the disposition of part or all of the assets were prejudiced without recourse. Furthermore, in the last few days there were clear and express indications of a line of behavior intended to put the company in even more serious difficulties.
>
> Because of the order of requisition, against which the Company has timely filed an appeal, the Company has lost the control of the plant and cannot avail itself of an immediate source of liquid funds; in the meanwhile payments have become due (as for instance installments of long-term loans; an installment of Lit. 800 million [US$1,280,000] to Banca Nazionale del Lavoro became due on April 18, 1968 . . .); it is acknowledged that it is impossible for the Company to pay such sums with the funds existing or available and such impossibility is due to the events of these last weeks[2]."

The Civil and Criminal Tribunal of Palermo found ELSI bankrupt on 16 May 1968, and named Avv. Giuseppe Siracusa, a Palermo attorney, as Curator (hereinafter, "Trustee") for the bankruptcy[3].

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[1] Minutes of Meeting of Raytheon-ELSI, S.p.A., Board of Directors, 25 April 1968 (Ann. 42). *See also*, Ann. 40, paras. 4-5.

[2] Raytheon-ELSI, S.p.A., Petition for Bankruptcy to the Civil and Criminal Tribunal of Palermo, p. 6, 26 April 1968 (Ann. 43).

[3] Raytheon-ELSI, S.p.A., Judgment of Bankruptcy, Civil and Criminal Tribunal of Palermo, decided 7 May 1968, deposited 16 May 1968, registered 17 May 1968 (Ann. 44). The Tribunal then appointed a five-member creditors' committee including two representatives of ELSI's labor force, two representatives of ELSI's bank creditors, and a representative of Raytheon Europe. Documents filed in the Civil and Criminal Tribunal of Palermo designating Giuseppe Siracusa Trustee in Bankruptcy and selecting the creditors committee in the bankruptcy of Raytheon-ELSI, S.p.A., 4 June 1968 (Ann. 45).

CHAPTER III

THE ACQUISITION OF ELSI'S ASSETS BY IRI

The Government of Italy publicly announced that it would take over ELSI's plant and related assets through one of IRI's subsidiaries. Raytheon and Italian officials discussed a possible agreement, but Italy broke off talks in November 1968. Notwithstanding its decision to acquire ELSI's assets, IRI then boycotted the series of three auctions held by the bankruptcy judge, while communicating directly with the Trustee and the bankruptcy judge to obtain different purchase terms than had been set for the auctions. Arguing that the plant has been idle for a long period, an IRI subsidiary leased and soon thereafter purchased ELSI's plant and most of its assets at a fraction of their original worth.

Section 1. Public Announcement of the Decision to Acquire ELSI's Assets

On 25 July 1968, the Minister of Industry, Commerce and Crafts announced to the Parliament that the Government of Italy intended to take over ELSI's plant through one of IRI's subsidiaries[1]. Until IRI's subsidiary was ready, ELSI's assets would be taken over by a new company formed by the Sicilian Region and some government agencies[2]. He also indicated that Italy was still considering a general creditors' settlement outside the bankruptcy proceeding[3].

Italian officials in fact met with Raytheon officers repeatedly from July to November 1968 to discuss a possible plan for a Government take-over that might include a creditor settlement[4]. The parties tentatively agreed on a plan which by early November 1968 was close to being finalized. In the course of these negotiations, all but one of the seven creditor banks agreed to accept 30 per cent-40 per cent of their unsecured claims. One bank decided that it would accept 50 per cent in a settlement[5].

On 13 November 1968, however, the Government of Italy announced its decision that an IRI subsidiary, IRI-STET, would "intervene" and take over ELSI's plant in Palermo[6]. A senior Italian official confirmed five days later that Italy broke off nearly successful settlement negotiations because it had decided to allow IRI to take over ELSI's assets without a creditor settlement[7]. On 30 November, former ELSI workers who had been occupying the plant took down the plant's entrance sign that said "ELSI" and replaced it with a new sign that said "STET[1]". In December, IRI formed a new subsidiary in Palermo — Industria Elettronica Telecomunicazioni, S.p.A. ("ELTEL") — to take over ELSI's plant and assets[2].

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[1] Address by Minister of Industry, Commerce, and Crafts Andreotti to the Italian Parliament, 25 July 1968 (Ann. 46). He explained that this subsidiary would acquire a "suitable site" and make other preparations to commence operations in Palermo, adding that "those familiar with situation in Palermo know that this is not difficult". *Ibid.*, at p. 3.

[2] *Ibid.*, at p. 4. The plan announced by the Industry and Commerce Minister for Sicily to take over and operate ELSI's facilities corresponds directly to the plan outlined by the President of the Sicilian Region, speaking on behalf of the Italian Prime Minister, the day before the requisition. *Supra*, p. 55.

[3] Ann. 46, at p. 4.

[4] Ann. 26, para. 16; Anns. 27, 28 and 29.

[5] Ann. 26, para. 16; Ann. 29. The United States is not claiming for damages based on this settlement that fell through. The present claim is based on the assumption that Raytheon would have paid 50 per cent to *all* of the large creditor banks. *Ibid.*

[6] Press Release by the Government of Italy, 13 November 1968 (Ann. 47); Ann. 26, para. 16.

[7] Ann. 29.

Section 2. The Acquisition of ELSI's Assets

A. IRI LEASES AND RE-OPENS ELSI

The bankruptcy court ordered an auction of ELSI's plant and equipment for 18 January 1969, over eight months after ELSI was declared bankrupt, and set a minimum bid of 5 billion lire (US$8 million)[3]. The Government of Italy had announced its decision to take over ELSI's assets for its own use and no private parties bid at the auction[4].

By this time, ELSI's plant had been idle and occupied by former employees for over nine months, and they were bringing pressure on the regional and national governments to reopen the plant[5]. As early as November 1968, government officials, as well as IRI, had promised that an IRI subsidiary would take over ELSI's plant and rehire most of the former employees[6]. In attempting to reach an agreement on such re-employment, however, disputes arose between employee representatives and IRI about timing[7]. Four hundred of ELSI's workers marched on Rome in early 1969 to protest the Government's delay[8]. IRI representatives and the Trustee in bankruptcy reportedly agreed on 18 March 1969 that IRI would acquire ELSI's assets, beginning with a lease of the plant for 150 million lire (US$240,000), followed by a negotiated purchase of the assets. This agreement, which was publicly reported, was reached in a meeting with the Prefect of Palermo[1].

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[1] Photograph of entrance to Elettronica Sicula, S.p.A., plant in Palermo, Sicily, 1962 (Ann. 48); Photograph of entrance to Raytheon-ELSI, S.p.A., plant in Palermo, Sicily, November 1968 (Ann. 49).

[2] Ann. 26, para. 20; "I.R.I. Breaks Its Promise — 200 Workers Remain Jobless", *L'Ora*, 5-6 December 1968 (Ann. 50).

[3] Notice of Auction to be held 18 January 1969, *Corriere della Sera*, 11 December 1968 (Ann. 51).

[4] Although several buyers expressed to the Trustee their interest in purchasing ELSI's assets, no buyers appeared at the first auction. Minutes of 18 January 1969 Auction of ELSI's Assets (Ann. 52); Ann. 26, para. 18. As stated by Avv. Bisconti:

> "S[ince] the Italian Government had made clear its decision to have one of its agencies acquire ELSI's assets, potential purchasers had no incentive and received no encouragement to pursue their interest. Moreover, during the time ELSI's plant was occupied by its employees, it would have been difficult for the Curator to even show the assets." (*Ibid*).

[5] Ann. 50; "CGIL: The Undertakings for ELSI Are Not Being Fulfilled", *Giornale di Sicilia*, 8 December 1968, p. 6 (Ann. 53); "ELSI: Agreement Reached for Workers", *Giornale di Sicilia*, 30 January 1969, p. 2 (Ann. 54); "The 'EX' [Employees] of ELSI Protest in Rome", *Giornale di Sicilia*, 30 January 1969, p. 5 (Ann. 55); "ELSI: Conclusive Meeting in the Prefecture", *Giornale di Sicilia*, 19 March 1969, p. 14 (Ann. 56). The workers' unions actively negotiated and lobbied the Government on their behalf. *See* Annex 50. As discussed in these news reports, IRI was represented in its negotiations for an acquisition of ELSI's plant and assets by Siemens, one of its industrial subsidiaries, and by ELTEL, which ultimately purchased the plant and related assets. *See*, e.g., Anns. 50, 54 and 56.

[6] Ann. 50.

[7] Anns. 50, 53, 54, 55 and 56. IRI ultimately agreed to rehire the employees in phases over a one-year period. *See* Ann. 56.

[8] Anns. 55 and 56.

While these negotiations were taking place, the bankruptcy court held a second auction on 22 March 1969, offering ELSI's assets for 6,223,293,258 lire (US$9,957,000)[2]. As with the first, IRI boycotted this auction, and no other potential purchasers appeared[3]. The President of the Sicilian Region explained on 5 April 1969 that ELTEL's decision not to bid was part of a national government plan dating back to October 1968:

> "[President Carollo] said: 'There is an agreement: precise, written, and signed.' . . . The agreement, as Carollo explained it last night, entailed the acquisition of the factory by IRI for the sum of four billion lire. It was even agreed that IRI would be absent from the first auction, participating instead in the second one, where the basic price was precisely four billion lire . . . 'What I am saying is so true —' continued Carollo, 'that immediately after this conversation the directors of IRI came to Palermo in order to form ELTEL . . . The truth . . . is that IRI (through ELTEL) has continued to speculate on a lower purchase price, no longer honoring its previous commitment; and it also happened that the consortium of creditors and the bankruptcy trustee backed out as well, bringing up the problem of the inventory to be acquired together with the plant[4]."

A week after the second auction, ELTEL publicly proposed to the Trustee that it be allowed to lease and reopen the ELSI plant for an 18-month period at an annual rental charge of 150 million lire (US$240,000)[5].

The creditors committee met and expressed what the bankruptcy judge called an "essentially negative opinion" of the proposed lease[6], recommending that any such lease be limited to 6 to 12 months and be granted only if ELTEL agreed to purchase all of ELSI's inventoried raw materials for 1.8 billion lire (US$2,880,000)[7]. Raytheon Europe's representative on the creditors committee vigorously opposed this lease, in part because of the nominal payment, but more fundamentally because it would discourage any potential competition for the purchase of ELSI's assets. As he elaborated in a petition to the bankruptcy judge:

> "IRI, notwithstanding the alleged commitments [to purchase ELSI's assets], has let two sales go unattended with the obvious purpose of causing in such way the price to become lower. The attitude of IRI leads one to suspect that this maneuver shall continue for several months until such time

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[1] Ann. 56. The Prefect, who had pending before him ELSI's April 1968 appeal of the requisition, actively participated in the March 1969 negotiations between IRI, Sicilian officials and the Trustee in Bankruptcy for the acquisition of ELSI's assets. *Ibid.* Despite his personal participation in IRI's acquisition of ELSI's assets, however, the Prefect delayed ruling that the requisition was illegal until August 1969, five months after the negotiations were concluded and 16 months after Italy seized the plant but only 40 days after IRI concluded its purchase of the assets. *See* discussion *infra*, p. 64.

[2] Notice of Auction to be held 22 March 1969, *The New York Times*, 5 March 1969, p. 28 (Ann. 57).

[3] Minutes of 22 March 1969 Auction of ELSI's Assets (Ann. 58).

[4] "'There Was an Agreement' Says Carollo", *Giornale di Sicilia*, 6 April 1969 (Ann. 59).

[5] Minutes of Raytheon-ELSI, S.p.A., Creditors Committee Meeting, 29 March 1969 (Ann. 60); Submission by Trustee in Bankruptcy Giuseppe Siracusa to the Civil and Criminal Court of Palermo, 3 April 1969 (Ann. 61). As noted *supra*, p. 59, this lease arrangement was reportedly arranged in advance of the creditors committee meeting by IRI and the Trustee, in the presence of the Prefect. Ann. 56.

[6] Ann. 61, p. 330, *infra*.

[7] Ann. 60, p. 327, *infra*.

> as the price of the plant, because of the reductions the law permits (but does not require), will go down to such a low value that the solution of the serious social problem represented by one thousand ELSI workers may also convert itself into an enormous bargain for IRI and into an enormous damage to ELSI creditors . . .
>
> ……
>
> It is impossible to see what benefit there may accrue to the creditors from the lease. On the contrary, it appears that the lease can only cause damage to the creditors because ELTEL, once it has obtained possession of the plant — notwithstanding the provision that may be included in the lease agreement that in the event of purchase of the plant or part thereof by third parties the same shall be terminated — shall have presumably no interest in purchasing the plant or, in any case, it shall have no urgency to purchase it and a consequence of all this shall be that, through successive auctions, the price shall be reduced to such a point as to depreciate completely the ELSI plant. On the other hand, a private group which might still think of purchasing the plant or part thereof, knowing of the aforementioned decision of the Italian Government and knowing that IRI is also in the possession of the plant, can only be absolutely discouraged even from taking into consideration such a possibility.
>
> [Moreover, the lease] shall make it impossible [for the liquidator] to sell the inventory at any reasonable price.
>
> ……
>
> [I]nventory can be sold at a reasonable price only to whomever uses the plant; therefore, if the inventory is separated from the plant and if an attempt is made to sell the inventory separately, the only result shall be that the inventory will be sold as scrap or that it may be absolutely impossible to sell a substantial part thereof[1]."

Notwithstanding the views of the creditors committee, the Trustee recommended and the bankruptcy judge agreed to grant ELTEL the lease on the terms it requested[2]. Raytheon Europe's appeal of the lease to the Civil and Criminal Tribunal of Palermo was denied on 9 May 1969, primarily on the ground that the lease could preserve the already reduced value of ELSI's assets, which had remained unused because of the requisition[3].

B. IRI Acquires ELSI's Work in Process

In April 1969, ELTEL proposed to buy ELSI's work in process — material left on production lines when the plant was requisitioned — for 105 million lire (US$168,000). The creditors committee met on 2 May 1969, to consider this offer, which was for about 48 per cent of the 217 million lire (US$347,200) at which this material had been inventoried and appraised[1]. Raytheon Europe's representative on the creditors committee opposed ELTEL's offer because of this low price and other grounds, arguing in part that the sale should not be considered prior to the auction proceedings scheduled for early May 1969[2]. The other members of the committee agreed to the sale despite ELTEL's low offer, in part because this inventory had already been sitting unused for over 12 months[3].

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[1] Brief to the Civil and Criminal Tribunal of Palermo from Avv. Giuseppe Bisconti, 8 April 1969, pp. 333-334, *infra* (Ann. 62).

[2] Submission to Civil and Criminal Tribunal of Palermo by Avv. Giuseppe Bisconti, 10 April 1969, pp. 337-338, *infra* (Ann. 63). In justifying his recommendation, the Trustee noted:

> "The rental of Lire 150,000,000 per year, considered abstractly, is neither adequate nor remunerating, however, if it is related to the obligations which the lessee shall undertake to safeguard the integrity and to maintain also for the future of the value of the plant, it shall on the other hand result to be definitely convenient." (*Ibid.*, at p. 338, *infra.*)

[3] Decree of the Civil and Criminal Tribunal of Palermo, 9 May 1969 (Ann. 64).

On 3 May 1969, IRI boycotted the third auction of ELSI's assets held by the bankruptcy judge[4]. ELTEL had notified the bankruptcy court on 16 April that it wanted to buy the plant and equipment only and not the supplies, "since these are not indispensible for administration". ELTEL indicated that it would bid at the third auction if it could make a bid of 3.2 billion lire for the plant and equipment only — rather than for the plant, equipment, inventory and supplies[5]. The court, however, did not change the terms of the auction and ELTEL did not bid. No other bidders appeared either[6].

On the same day as the third auction, however, the Trustee petitioned the bankruptcy judge to approve the sale of ELSI's work in process to ELTEL for the exact price ELTEL had offered, reasoning that the reduced price was justified by the long period of plant inactivity and by ELTEL's lease of the plant[7]. The Court approved the sale at the price set by ELTEL[8].

C. IRI Completes Its Acquisition of ELSI's Assets

Having acquired control of ELSI's plant through the lease and ownership of its work in process, ELTEL quickly negotiated a price to its liking for ELSI's remaining assets.

On 27 May 1969, ELTEL submitted to the bankruptcy judge its offer to buy the remaining plant, equipment and supplies for 4 billion lire (US$6,400,000)[1]. The Trustee proposed to the creditors committee that it accept this offer, subject to some minor changes[2]. The committee considered the proposal, as modified, on 6 June and approved it by a split vote[3]. On 7 June the bankruptcy judge scheduled an auction for 12 July 1969 on the agreed terms[4]. After Raytheon Europe unsuccessfully appealed the judge's decision to sell ELSI's assets to ELTEL[5], ELTEL appeared at the fourth auction and purchased ELSI's plant and remaining assets[6]. The Civil and Criminal Tribunal of Palermo approved this purchase and assigned ELSI's remaining assets to ELTEL the next day[7]. Thus, on 12 July 1969, ELTEL finally completed its purchase of ELSI's assets for 4.006 billion lire (US$6,409,600), a price it had essentially determined eight months earlier[8].

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[1] Minutes of Creditors Committee Meeting, Raytheon-ELSI, S.p.A., 2 May 1969 (Ann. 65).

[2] Annex 65. Raytheon Europe's representative stated that IRI was simply pursuing its "well thought-out plan which is, in essence, geared to a maximum devaluation of Elsi's business from which Eltel alone would benefit". *Ibid.*, at p. 344, *infra*.

[3] *Ibid.*, at p. 344, *infra*; Ann. 26, para. 22. To Raytheon's knowledge, this material was not offered to any other purchasers, since the plant and its assets were offered as a single package for everyone except IRI. *Ibid.*

[4] Notice of Auction to be held 3 May 1969, *The New York Times*, 8 April 1969, p. 71 (Ann. 66); Minutes of 3 May 1969 Auction of ELSI's Assets (Ann. 67). The bankruptcy judge set a price of 5 billion lire (US$8 million) at this auction. The disparity in prices among the first three auctions arises in part because the bankruptcy judge slightly varied the particular assets that were offered at each auction in addition to ELSI's plant. *See* Anns. 51, 57 and 66.

[5] Submission to the Civil Court of Palermo by ELTEL, S.p.A., 16 April 1969 (Ann. 68).

[6] Ann. 67.

[7] Submission to the Civil and Criminal Tribunal of Palermo by Trustee Giuseppe Siracusa, 3 May 1969, subsequent order by the Tribunal, 5 May 1969 (Ann. 69). The Trustee stated:

> "According to the lease agreement the undersigned [Trustee] is obligated to remove the material in question which removal costs a considerable amount of money and time and results in a substantial reduction in value of the material proper . . . In view of the fact that the material is one year old and difficult to sell while its removal from the assembly line would only reduce its value, the undersigned is in favor of selling it for L.105 million." (Ann. 69.)

[8] Ann. 26, para. 22; *see also*, Transcript of Bankruptcy Hearing, Civil and Criminal Court of Palermo, 13 July 1969 (Ann. 74).

The Government of Italy thus achieved its objective of acquiring ELSI's plant and other assets without paying or otherwise co-operating with ELSI's shareholders, Raytheon and Machlett, and without paying a freely market-determined price. IRI's subsidiary Italtel, S.p.A., now uses ELSI's plant to manufacture telephone equipment[9].

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[1] Submission to the Civil Court of Palermo by ELTEL, S.p.A., 27 May 1969 (Ann. 70). This offer, which was accepted, was the price reportedly negotiated by IRI and the Trustee eight months earlier, in October 1968. Ann. 59. Earlier in May 1969, ELTEL apparently attempted unsuccessfully to get an even lower price for the assets. Two days after the third auction, on 5 May 1969, ELTEL submitted to the bankruptcy judge its own appraisal of ELSI's plant and the other remaining assets at 2.381 billion lire (US$3,809,600). Ann. 26, para. 23.

[2] Minutes of Creditors Committee Meeting, Raytheon-ELSI, S.p.A., 6 June 1969 (Ann. 71).

[3] *Ibid.* The two ELSI employee representatives voted in favor, the representative of general creditors abstained, the bank representative was absent, and the Raytheon Europe representative voted against the proposal. *Ibid.*

[4] Notice of Auction to be held on 12 July 1969 (Ann. 72).

[5] Ann. 26, para. 24.

[6] *Ibid.* To encourage ELTEL not to prolong any further its efforts to secure ELSI's assets at an even lower price, Raytheon Company agreed in late June 1969 to extend to ELTEL a license for its existing Italian patents and certain proprietary information. Letter from Joseph Oppenheim, Vice-President, Raytheon Company, to Industria Elettronica Telecomunicazioni, S.p.A., 26 June 1969 (Ann. 73).

[7] Ann. 74.

[8] Ann. 59.

[9] *See* I.R.I., Istituto per la Ricostruzione Industriale, 1985 *Yearbook*, pp. 260-263 (Ann. 75). Italy is thus using ELSI's plant to produce one of the new products proposed by ELSI in its 1967 Report to Italian officials. Ann. 22, p. 215, *infra*; Ann. 15, para. 64.

CHAPTER IV

SUBSEQUENT ITALIAN COURT ACTION

After IRI had completed its purchase of ELSI's assets, the Prefect finally ruled that the requisition had been illegal The Trustee then sued the Mayor and Italian Interior Minister for damages based on this ruling, but was awarded only damages for loss of possession during the requisition. Five government-controlled banks sued Raytheon in Italian courts to recover for the unsecured, unguaranteed loans they had made to ELSI. All of these suits resulted in judgments for Raytheon. Bankruptcy proceedings were completed in 1985, with secured and preferred creditors receiving payment in full and unsecured creditors receiving only a small fraction of the amounts they had claimed.

Section 1. The Illegality of the Requisition and Aftermath

As noted above[1], on 19 April 1968, ELSI appealed the Mayor's 1 April 1968 requisition of its assets to the Prefect of Palermo, an official of the Italian Government empowered to hear appeals of decisions by local governmental officials. The Prefect ruled on ELSI's appeal of the requisition order on 22 August 1969, over 16 months after the appeal was filed, but only 40 days after ELTEL had completed its acquisition of ELSI's assets[2]. The Prefect found the requisition to have been illegal, ruling that it could not possibly have achieved its stated purposes[3]. Specifically, the Prefect ruled that "the order is destitute of any juridical cause which may justify it or make it enforceable"[4].

The Mayor appealed the Prefect's Order to the Italian Council of State and the President of Italy[5]. His appeal was dismissed on the ground that he lacked standing to appeal a decision of the Prefect, his administrative superior[6]. The Prefect's ruling therefore stands as a final decision of Italian judicial authorities that the requisition was unlawful.

The Prefect's delay in ruling on ELSI's appeal of the requisition was apparently unprecedented. In other cases in which the 1865 law had been invoked as a basis for requisition of an industrial plant, the Prefect of the relevant jurisdiction quickly quashed the requisitions[7]. In most of these cases, the requisitions were quashed in less than 30 days, sometimes in as little as one day[8].

Based on the Prefect's decision, the Trustee brought suit on behalf of ELSI's bankrupt estate on 16 June 1970 in the Court of Palermo against the Minister of the Interior of Italy and the Mayor of Palermo for damages to ELSI resulting from the illegal requisition[1]. In his complaint, the Trustee stated that the requisition had not only caused ELSI's bankruptcy, but had also impeded its success:

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[1] *Supra*, p. 55.

[2] Judgment of Prefect of Palermo, 22 August 1969 (Ann. 76).

[3] *Ibid.*, p. 362, *infra*.

[4] Ann. 76, p. 362, *infra*. The Prefect noted that the Mayor's actions were motivated in part by his desire to show the local press that he was "fac[ing] the problem in some way". *Ibid.*, p. 363, *infra*.

[5] Council of State Opinion Regarding Appeal by Mayor of Palermo, 19 November 1971 (Ann. 77); Ruling by President of Italy Dismissing Appeal by Mayor of Palermo, dated 22 April 1972, registered 19 May 1972 (Ann. 78).

[6] *Ibid.*

[7] Ann. 26, para. 10.

[8] *Ibid.* In none of these cases did the Prefect delay his ruling for more than 30 days. *Ibid.*

> "In consideration of the heavy legal and economical situation created by the appealed order of requisition, Raytheon-ELSI S.p.A. was obliged to file for bankruptcy, which was declared by decision of this Tribunal on May 7-9, 1968.
>
> Even after the declaration of bankruptcy the Trustee in Bankruptcy, Avv. Siracusa, could not take possession of the plant and relative equipment due to the order of requisition issued by the Mayor of the City of Palermo, which remained in effect until September 30, 1968, causing unimaginable damages for the bankrupt company and, therefore, for the creditors[2]."

The Trustee sought damages of 2.395 billion lire (US$3,834,500) plus interest for the decrease in value of ELSI's plant and electronic equipment during the requisition, and for ELSI's inability to dispose of the plant and equipment during the requisition period[3].

On 2 February 1973, the Court of Palermo ruled that the Trustee was not entitled to compensation for the requisition[4]. On appeal, the Court of Appeals of Palermo found on 24 January 1974 that the Trustee was entitled at least to compensation from the Minister of the Interior for loss of use and possession of ELSI's plant and assets during the six-month requisition period. It therefore awarded, in effect, a "rental" payment of some 114 million lire (US$171,000), computed as half the annual rate of 5 per cent of the total value of the assets[5]. This decision was upheld on appeal by the Supreme Court of Appeals on 26 April 1975[6]. The amount of the judgment was ultimately received by the Trustee and, less costs and expenses, distributed to ELSI's creditors[7].

Section 2. Italian Bank Suits Against Raytheon

Upon demand, Raytheon Company paid 5.7876 billion lire (US$9,283,600) as payment in full of those of ELSI's bank loans that it had guaranteed[8]. Seven banks had made unguaranteed loans to ELSI that were outstanding on 1 April 1968, when Italy requisitioned ELSI's plant and assets[9].

Between 1969 and 1971, five of these banks that were owned or controlled by IRI or the Sicilian Region filed suits against Raytheon in Italian courts to recover the loans they had made to ELSI[1]. All of these lawsuits resulted in judgments in favor of Raytheon after many years of litigation[2]. The courts dismissed the banks' claims that Raytheon had guaranteed the loans and, in keeping with well-established precedent, held that Raytheon's interest in ELSI did not make it a "sole shareholder" that could be held liable for loans to ELSI[3]. All of the decisions totally cleared Raytheon of any explicit or implicit misconduct with respect to ELSI[4].

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[1] Ann. 78.

[2] Lawsuit for damages filed by the Trustee against the Minister of the Interior and the Mayor of Palermo, 16 June 1970, p. 2 (Ann. 79).

[3] The suit was brought by the Trustee seeking compensation for the bankruptcy estate. It was not brought, nor could it have been brought under Italian law, on behalf of ELSI's shareholders, Raytheon and Machlett. Ann. 26, para. 28.

[4] Judgment of the Court of Palermo, decided 2 February 1973, filed 29 March 1973, registered 4 April 1973 (Ann. 80).

[5] Judgment of the Court of Appeals of Palermo, registered 24 January 1974, p. 24 (Ann. 81). The United States dollar equivalent in the text is derived from the exchange rate on 24 January 1974 of United States $1.00 to Italian L.666.667. Ann. 12.

[6] Judgment of the Supreme Court of Appeals, 26 April 1975 (Ann. 82). The Court determined that the Court of Appeals incorrectly computed the damages owed to the Trustee, but that the decision was nonetheless "equitable". *Ibid.*, p. 389, *infra.*

[7] Ann. 26, Attachment.

[8] Ann. 13, para. 29, and Schedule H; Ann. 14, Exhibit B. This total includes principal and interest, as detailed in Ann. 13, Schedule H.

[9] Ann. 13, Schedule D.

Section 3. The Conclusion of the Bankruptcy Proceedings

In the bankruptcy, creditors presented claims against ELSI totalling some 13 billion lire (US$20 million)[5]. Raytheon and one of its subsidiaries Raytheon Service Company ("RSC"), had unsecured claims against ELSI of some 1.14 billion lire (US$1,830,000) for goods and services they had advanced to ELSI on unsecured open accounts[6]. On advice of Italian counsel, however, Raytheon and RSC did not file claims in the bankruptcy proceeding because it was clear that they would not receive enough in the bankruptcy to justify their filing costs[7].

The bankruptcy proceedings closed in November 1985. According to the bankruptcy reports, the bankruptcy realized only some 6.37 billion lire (US$10,192,000) for ELSI's assets, as compared with the minimum liquidation value of 10.84 billion lire (US$17,344,000)[8]. Of the amount realized, some 6.08

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[1] The following banks filed suit against Raytheon in Italian courts on the dates indicated in parentheses: Il Credito Italiano (7 May 1969), Banco di Roma (23 June 1969), Banca Commerciale Italiana (15 January 1969), Banco di Sicilia (13 March 1970), and Casa Centrale di Risparmio V. E. (18 July 1970). IRI controls the first three of these banks. Banco di Sicilia and Casa Centrale di Risparmio V. E. are government-controlled banks which have their headquarters and primary place of business in Sicily. Two of ELSI's unguaranteed creditors, IRFIS and First National City Bank of New York, did not sue Raytheon. President Carollo of the Sicilian Region had explicitly threatened tnat Raytheon would be subjected to this type of litigation if ELSI's shareholders decided to close ELSI and take it through an orderly liquidation. Ann. 38.

[2] Ann. 26, para. 26.

[3] *Ibid.*

[4] *Ibid.*

[5] *Ibid.*, Exhibit A; Ann. 30, Schedule D.

[6] Ann. 13, Schedule D; Ann. 14, Exhibit C; Ann. 26, para. 14. Raytheon Service Company is a United States corporation incorporated in Delaware and wholly owned by the Raytheon Company. Ann. 13, para. 31. Certificate of Good Standing, State of Delaware, Raytheon Service Company, 22 December 1986 (Ann. 83); Proof of Raytheon Company's 100 per cent ownership of Raytheon Service Company, 8 October 1986 (Ann. 84).

[7] As Avv. Bisconti explains:

> "Under Italian law, the filing of documents supporting a claim in bankruptcy may be subject to a registration tax, the amount of which is a percentage of the claim and varies depending on the nature of the claim. If Raytheon and RSC had filed in bankruptcy, they would have paid a substantial tax. Given ELSI's many secured creditors, the likelihood that the full value of ELSI's assets would not be realized in the bankruptcy proceeding, and the costs of the bankruptcy, I advised Raytheon and RSC not to file claims at the time. Under Italian law, it would have been possible for them to file such claims at a later stage in the proceedings and participate in distributions subsequent to their filing. As the bankruptcy proceeded to a conclusion, however, it became very apparent that Raytheon and RSC would not recover enough in the bankruptcy to justify the costs of filing. On my advice, therefore, these companies did not file in the bankruptcy." (Ann. 26, para. 14.)

[8] Ann. 13, Schedules C1, C2, C3 and C4; Ann. 26, Exhibit A; Ann. 30, para. 6 and Attachment B.

billion lire (US$9,728,000) went to pay banks, employees and other creditors[1]. The remainder went to pay bankruptcy administration, tax, registry, and customs charges. All of the secured and preferred creditors who filed claims in the bankruptcy were paid in full. The unsecured creditors received less than 1 per cent of their claims[2].

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[1] Ann. 30, Attachment B, Schedule A.

[2] Ann. 26, Attachment; Ann. 30, Attachment B.

PART III. THE JURISDICTION OF THE COURT

Jurisdiction is based on Article 36 (1) of the Statute of the Court, as read in conjunction with Article XXVI of the 1948 Treaty of Friendship, Commerce and Navigation (the "Treaty") between the two countries[1]. Article 36 (1) expressly recognizes the ability of parties to the Statute — such as Italy and the United States — to provide by treaty for the Court to exercise jurisdiction over specified matters. In Article XXVI of the Treaty, Italy and the United States agreed that:

> "Any dispute between the High Contracting Parties as to the interpretation or the application of this Treaty, which the High Contracting Parties shall not satisfactorily adjust by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties shall agree to settlement by some other pacific means."

As a result of the requisition and subsequent bankruptcy of ELSI, and related actions as described in the Statement of Facts above, a dispute arose between Italy and the United States concerning the interpretation and application of the Treaty and its 1951 Supplement[2]. The Government of the United States contends that Italy's actions have violated a number of provisions of the Treaty and Supplement, as detailed below. The Government of Italy, however, has denied this contention.

This dispute has not been "satisfactorily adjust[ed] by diplomacy". As detailed in Attachment 2 of the Application submitted by the United States in this case, the Governments of the United States and Italy have attempted to resolve this dispute by diplomatic means for many years without reaching any mutually satisfactory agreement. Finally, in the fall of 1985, the two Governments agreed in principle that a contentious proceeding under the Treaty would be an appropriate means of resolving the dispute[3]. No efforts at settlement are pending.

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[1] Ann. 1.

[2] Article IX of the Supplement provides that it shall "constitute an integral part of the said Treaty of Friendship, Commerce and Navigation". Ann. 2.

[3] Either party has, of course, a unilateral right to invoke the jurisdictional provisions of the Treaty. *See*, e.g., *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, pp. 26-27, in which jurisdiction was premised, *inter alia*, on the unilateral invocation of Article XXI (2) of the 1955 Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran, 284 *UNTS* 93, which contained language virtually identical to that contained in Article XXVI of the Treaty between the United States and Italy.

PART IV. THE CLAIMS OF THE UNITED STATES

CHAPTER I

INTRODUCTION

Pursuant to the Treaty and its Supplement, Italy assumed a number of specific obligations to protect investments made by United States nationals in its territory.

A major purpose of this Treaty was to encourage investment by nationals of one country in the economy of the other, by creating a code of fair treatment for the protection of foreign investors[1]. Thus, the Treaty contains numerous specific and interrelated provisions for the protection of foreign investors, reflecting the parties' fundamental intention to provide a framework which would foster a favorable climate for investment[2].

As stated in the Majority Report to the Italian Senate on the Treaty:

> "The underlying principles are simple and fundamental. Full respect for the respective sovereignty and full equality between the two parties, and consequently reciprocity of treatment; systematic application of the most-favored-nation principle and thus mutual granting of the most-favored treatment to the foreign citizens and foreign interests; a spirit of friendship in

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[1] As noted in the Majority Report to the Italian Senate:

> "there is nothing here that could create conditions of privilege, that is not justified under law and equity and that does not correspond to the same interest on the part of the Italian economy. The latter has a need, indeed an urgent need, for foreign capital. Certainly these general dispositions are not sufficient in themselves to hasten the influx, but there remains the appropriateness of these precautionary measures against any possible creation of persecutory or discriminatory conditions."

Senate of the Republic, Bills and Reports — 1948-1949, N. 344-A, Report of the Majority, p. 9, Sent to the Office of the President on 28 May 1949 (Ann. 85).

[2] "[T]his is a general treaty, . . . It is thus a framework that determines in a definitive, organic and lasting way the relations between the citizens of the two countries and the legal status that each country grants to citizens of the other country living on its territory." *Ibid.*, p. 2. As a leading commentator points out:

> "In a real sense, therefore, the FCN treaty as a whole *is* an investment treaty; not a mosaic which merely contains discrete investment segments. It regards and treats investment as a process inextricably woven into the fabric of human affairs generally; and its premise is that investment is inadequately dealt with unless set in the total 'climate' in which it is to exist . . . These treaties focus, in fundamental terms of enduring value over the long range, upon the line between policy favorable and policy unfavorable to foreign investment: namely, hospitality to and equality for the foreigner under the law, and respect for his person and his property." (H. Walker, "Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice", 5 *American Journal of Comparative Law*, p. 229, at pp. 244, 247 (1956).)

> the implementation of the Treaty, goodwill when the precise provision cannot be satisfied, fair play [so in Italian] in all cases[1]."

As described by the United States Department of State, the Treaty was "designed to assure to economic enterprises the ability to operate in a foreign country on a basis of true competitive equality with local concerns"[2].

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[1] Ann. 85, pp. 2-3. *See also, Commercial Treaties: Hearings Before the Special Subcommittee on Commercial Treaties and Consular Conventions, Committee on Foreign Relations, United States Senate*, 82d Cong., 2d Sess., p. 15 (1952) (Ann. 86). For the United States, this reflected a significant shift in emphasis after the Second World War:

> "Perhaps the most important respect in which the current [post war] treaties differ from those of the twenties and thirties is the greatly increased emphasis on the encouragement of American private investment abroad, by the expansion and strengthening of provisions relating to the protection of the investor and his interests."

Ann. 86, p. 394, *infra* (Remarks of Harold P. Linder, Deputy Assistant Secretary of State for Economic Affairs). Materials from ratification proceedings in the United States Senate are cited herein, together with comparable materials from Italian internal ratification proceedings, to demonstrate that the two parties had a common understanding of the meaning and purpose of the Treaty. Standing alone, such internal ratification proceedings cannot, of course, bind another party.

[2] "Commercial Treaty Program of the United States", Department of State Publication 6565, *Commercial Policy Series* 163, p. 2 (January 1958) (Ann. 87).

CHAPTER II

INTERFERENCE WITH THE MANAGEMENT AND CONTROL OF ELSI

Section 1. Article III of the Treaty

Article III of the Treaty guarantees that nationals of either party may participate in corporate enterprises organized under the other's laws. Article III (1) provides most-favored nation treatment to United States nationals, including corporations, to organize and participate in Italian corporations[1]. It also provides that Italian corporations controlled by United States nationals shall enjoy most-favored nation treatment with respect to exercising the functions for which they were created.

Article III (2) extends further guarantees of treatment in the case of corporations engaged in most activities[2]:

> "The nationals, corporations and associations of either High Contracting Party *shall be permitted*, in conformity with the applicable laws and regulations within the territories of the other High Contracting Party, *to organize, control and manage corporations* and associations of such other High Contracting Party for *engaging in commercial, manufacturing*, processing, mining, educational, philanthropic, religious and scientific activities." (Emphasis added.)

Like Article III (1), Article III (2) specifically addresses both the rights of United States persons seeking to invest in Italian corporations and of the Italian corporations which they control. Paragraph 2 provides in its first sentence that United States investors shall be permitted to "organize, control and manage" Italian corporations engaged in, *inter alia*, commerce and manufacturing, subject only to the requirements established by local law[1]. This provision recognizes the need for conformity with local law, but does not refer to treatment "no less favorable" than that accorded to corporations owned by local nationals. It is by its terms something other than a guarantee of national treatment. It is, rather, a guarantee of non-interference with management and control. United States nationals "shall be permitted" to organize, manage and control Italian corporations without impediment or interference, except for the requirements or constraints imposed by law. This guarantee encourages investment by assuring investors of their freedom to manage and protect their investment.

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[1] Article III (1) provides that foreign corporations:

> "shall enjoy, . . . rights and privileges with respect to organization of and participation in corporations and associations of such other High Contracting Party, . . . in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to nationals, corporations and associations of any third country".

Italian corporations so organized:

> "and controlled by such nationals, corporations and associations, shall be permitted to exercise the functions for which they are created or organized, in conformity with the applicable laws and regulations, upon terms no less favorable than those now or hereafter accorded to corporations and associations that are similarly organized or participated in, and controlled, by nationals, corporations and associations of any third country".

[2] Because each country had restrictions on the rights of aliens to establish and manage companies engaged in certain activities, Italy and the United States were not able to make the broader protection of Article III (2) universal. The activities enumerated reflected those in which neither country had any domestic legal impediments to conferring an unqualified right on the other's nationals to organize, manage and control corporations or associations. Article III (2) further provides that corporations so organized, which are

> "controlled by nationals, corporations and associations of either High Contracting Party . . . *shall be permitted to engage in the aforementioned activities* therein, in conformity with the applicable laws and regulations, *upon terms no less favorable than those* now or hereafter *accorded* to corporations and associations of such other High Contracting Party controlled by its own *nationals*, corporations and associations". (Emphasis added.)

Italy thus has an obligation to the United States under Article III (2) to allow United States corporations to organize, manage, and control Italian corporations operating in certain specified areas without governmental intervention, except for such conditions and regulations as are established by law.

This obligation reflects a particular emphasis, in the Treaty as a whole, on the importance of assuring an investor that, once he invests in a company in the other country, he will receive fair treatment:

> "[T]here can be little in the way of effective promotion [of investment] unless there is effective protection, for new capital is unlikely to venture where existing capital is ill-treated. Hence the emphasis on the protective feature of the treaty provisions on investments is essentially a matter of placing first things first[2]."

The first articles of the Treaty, the so-called "establishment" provisions, are particularly important in this regard[3]. As stated in the Majority Report to the Italian Senate:

> "The first articles, which are the most important ones, guarantee to citizens of the other party, to juridical persons, commercial companies, enterprises and associations constituted by them, the exercise of commercial and non-commercial activities in the widest sense. Full rights, then, to any activity, to acquisition, possession, administration of movable and real property; to organize, direct, manage companies, . . . etc.[4]"

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[1] This qualification should be construed to permit regulation of the exercise of management and control, but not abrogation of that right. As noted by Walker, the phrase "in conformity with applicable laws and regulations", as it occurs in this Treaty, "is framed in such a manner as to imply that it does not constitute a reservation detracting from the treaty right; and such phraseology has been omitted from subsequent treaties". H. Walker, "Provisions on Companies in United States Commercial Treaties", 50 *American Journal of International Law*, p. 373, at p. 384, n. 53 (1956). In view of the possible ambiguity of this qualification, however, the Supplementary Agreement provided stronger protection by absolutely prohibiting arbitrary and discriminatory interference, whether or not in accordance with local law. *See* section 2, *infra*.

[2] "Commercial Treaty Program of the United States", Department of State Publication 6565, *Commercial Policy Series* 163, p. 2 (January 1958) (Ann. 87, p. 445, *infra*.).

[3] As stated by Hawkins,

> "From the standpoint of economic relations, . . . the significance of establishment provisions arises largely from their relationship to the flow of investment capital. Foreign capital will not enter a country unless it has some assurance that it will receive fair treatment . . ." (H. Hawkins, *Commercial Treaties and Agreements*, pp. 15-16 (1951).)

[4] Ann. 85, p. 6.

The United States submits that the requisition of ELSI's plant and related assets constituted an interference with Raytheon's and Machlett's management and control of ELSI which was not in accordance with applicable law, in violation of Article III (2) of the Treaty. Since Raytheon and Machlett are incorporated in the United States, they are United States corporations for purposes of the Treaty[1]. ELSI was an Italian corporation engaged in manufacturing and commerce — two of the activities enumerated in Article III (2). The Government of Italy thus was obligated by Article III (2) not to interfere with Raytheon and Machlett's management and control of ELSI. While ELSI was subject under that provision to generally applicable Italian law, the Mayor of Palermo's requisition was contrary to that law[2].

This unlawful requisition had the purpose and effect of disrupting Raytheon's and Machlett's continued management and control of ELSI. In early 1968, following a year of serious but unsuccessful efforts to improve ELSI's profitability, Raytheon and Machlett — which had yet to receive any return on their capital — decided that further investment in the company was unwise. While they continued to seek Italian Government support for the plant in Sicily, they also began to plan for the possible voluntary liquidation of ELSI.

Despite assurances given by the President of the Sicilian Region as late as February 1968 that ESPI, a Sicilian Government entity, would provide funds to enable ELSI to stay in business if necessary, no support was forthcoming from Italy to justify a reversal of the impending decision to liquidate. Accordingly, Raytheon and Machlett decided to cease full-scale production and liquidate the company and to dismiss as of 29 March all employees but those personnel necessary to carry out the liquidation[3].

On 31 March, however, the President of the Sicilian Region informed ELSI's Managing Director of an Italian Government plan whereby ELSI's plant would be requisitioned to prevent liquidation and to give the State conglomerate IRI the opportunity to acquire ELSI's assets. The following day, the Mayor of Palermo issued the requisition order[4].

In so doing, the Mayor of Palermo was acting in his capacity as an agent of the national Government, and thus his actions were attributable to the Government of Italy. As the Court of Palermo ruled:

> "the Mayor in issuing the orders mentioned in Article 69 of Decree Law Pres. Reg. No. 6 of October 21, 1955, acts as a functionary of the civil administration of the [Ministry of the] Interior, of whose hierarchy he is a part, so that, as has been established for the responsibility of the organs which are part of the direct administration of the State, the responsibility for the acts of the mayor in the execution of his functions as a government official must be placed at the summit of the above-mentioned state administration, i.e., the Minister of the Interior . . .[5]".

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[1] Article II (2) specifies that

> "Corporations and associations created or organized under the applicable laws and regulations within the territories of either High Contracting Party shall be deemed to be corporations and associations of such High Contracting Party . . ."

[2] As discussed at pp. 73-74, *infra*, the Mayor's action was attributable to the Government of Italy.

[3] *Supra*, pp. 53-54; Ann. 15, para. 47.

[4] *Supra*, p. 54; Ann. 16, paras. 61-62 and Ann. 33.

[5] Ann. 80, at p. 373, *infra*. Thus, the requisition is an action of the national Government *per se*. *See*, e.g., R. Ago, "Le Delit International", 68 *Recueil des cours de l'Académie de droit international de La Haye* ("*Recueil des cours*"), p. 419, at pp. 462-469 (1939); D. Anzilotti, 1 *Cours de droit international*, p. 470 (1929); E. Jiménez de Aréchaga, "Interna-

This conclusion is not affected by the determination that the requisition was unlawful. It has long been established, as stated in the *Estate of Jean-Baptiste Claire (France v. United Mexican States)*, that "it does not matter whether the official or agency in question acted within the limits of its competence or exceeded them[1]". Moreover, even if the Mayor had not been found to be acting as an official of the national Government, the requisition would be attributable on other grounds to the Government of Italy since the action clearly was taken by the Mayor in his official capacity as a government officer — a position he maintained consistently before the courts of Italy[2].

The requisition was aimed specifically at preventing Raytheon and Machlett from taking steps to protect their interests as investors, namely, to liquidate ELSI and minimize their losses. It necessarily and intentionally blocked ELSI's plans to sell its assets. Having relinquished control of the plant on 2 April, ELSI management no longer had physical access to the assets. Nor could it have attempted to sell them with the legal cloud of the requisition over the plant. ELSI was prevented from carrying out a management decision reached by its controlling shareholders — to close an unprofitable plant and to liquidate its assets to satisfy outstanding debts. Moreover, this order was not in accordance with Italian law, as subsequently confirmed by the Prefect of Palermo[3].

The Government of Italy thus did not permit Raytheon and Machlett to organize, manage and control their investment, for their own protection as investors, but rather intervened with an illegal action to prevent such management and control. The United States accordingly submits that the Government of Italy violated Article III (2) of the Treaty.

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tional Responsibility", *Manual of Public International Law*, p. 544 (M. Sorensen, ed., 1968); I. Brownlie, *System of Law of Nations, State Responsibility* (Part I), pp. 132-141 (1983); G. A. Christenson, "The Doctrine of Attribution in State Responsibility", *International Law of State Responsibility for Injuries to Aliens*, pp. 330-332 (R. B. Lillich, ed. and contrib., 1983); C. De Visscher, *Theory and Reality in Public International Law*, p. 289 (1968); C. Eagleton, *The Responsibility of States in International Law*, p. 44 (1928); Articles 5, 6 and 7 of Part One of the International Law Commission's draft articles on State responsibility ("International Law Commission's draft articles on State responsibility"), II *Yearbook of the International Law Commission, 1980* (Part Two), p. 31; F. V. Garcia-Amador, "Draft Articles on the Responsibility of the State for Injuries Caused in its Territory to the Person or Property of Aliens" ("Garcia-Amador's draft articles on State responsibility"), *reprinted in* F. V. Garcia-Amador, L. Sohn and R. Baxter, *Recent Codification of the Law of State Responsibility for Injuries to Aliens*, pp. 21-23 (1974).

[1] Translation. 5 *Reports of International Arbitral Awards*, p. 516, at pp. 529-530. As more recently stated in Comment 1 to Article 10 of Part One of the International Law Commission's draft articles on State responsibility, the action is attributable

> "even in the case of manifest incompetence of the organ perpetrating the conduct complained of, and even if other organs of the State have disowned the conduct of the offending organ". (II *Yearbook of the International Law Commission, 1975*, p. 61.)

See also, e.g., T. Meron, "International Responsibility of States for Unauthorized Acts of Their Officials", 1957 *British Year Book of International Law*, pp. 88, 93, and 113-114 (1958); P. Reuter, "La responsabilité internationale", *Droit international public*, pp. 149-150 (1958); Brownlie, *op. cit.*, at pp. 135-137; Jiménez de Aréchaga, *op. cit.*, at p. 548; Eagleton, *op. cit.*, at pp. 57-58; Anzilotti, *op. cit.*, at pp. 470-471; Ago, *op. cit.*, at p. 469.

[2] Ann. 80, p. 372, *infra*; Ann. 81, p. 379, *infra*. *See*, e.g., *Pieri Dominique and Company (France v. Venezuela)*, 10 *Reports of International Arbitral Awards*, p. 139, at p. 156; Brownlie, *op. cit.*, at pp. 141-142; Christenson, *op. cit.*, at p. 333; Reuter, *op. cit.*, at pp. 152-153; Anzilotti, *op. cit.*, at pp. 475-478; Jiménez de Aréchaga, *op. cit.*, at pp. 557-558; Eagleton, *op. cit.*, at p. 32; Article 7 of the International Law Commission's draft articles on State responsibility, II *Yearbook of the International Law Commission, 1980*, at p. 31.

[3] Ann. 76, pp. 362-363, *infra*.

Section 2. Article I of the Supplement

Less than two years after the Treaty entered into force, Italy and the United States signed the Supplement to the Treaty. The Supplement was seen by the parties as an important step in further encouraging investment by providing stronger guarantees to investors of freedom from harmful treatment. As stated in the Preamble, the purpose of the Supplement was to "giv[e] added encouragement to investments of one country in useful undertakings in the other country . . . by amplification of the principles of equitable treatment". The United States Secretary of State, in recommending that the Senate give its advice and consent to ratification, similarly stated that:

> "by rounding out the comprehensive rules governing general economic relations established by [the] Treaty, [the Supplement would] further encourage private capital investments[1]".

The Italian Minister of Foreign Affairs, speaking before the Italian Senate, emphasized Italy's strong economic interest in ratification of the Supplement[2]. As Senator Jannuzzi, who wrote the majority report approving Senate ratification, observed:

> "The ruling out of any discriminatory treatment or arbitrary measures to the prejudice of citizens, juridical persons or associations of Italy or of the United States that respectively work in the territory of the other State, the possibility of unobstructed control of enterprises, the most liberal possible treatment assured for the transferability of capital, [and] the fiscal concessions are all principles which, suitably supplementing those contained in [the Treaty], aid the Italian economy [in particular], in so far as they are aimed at favoring the investment of US capital in Italy[3]."

The "exclusion of any discriminatory treatment or arbitrary measures to the damage of . . . juristic persons" to which Senator Jannuzzi refers is contained in Article I of the Supplement, which came into force on 2 March 1961. It provides that:

> "The nationals, corporations and associations of either High Contracting Party *shall not be subjected to arbitrary or discriminatory measures* within the territories of the other High Contracting Party resulting particularly in: *(a) preventing* their *effective control and management of enterprises* which they have been permitted to establish or acquire therein; or *(b)* impairing their other legally acquired rights and interests in such enterprises or in the investments which they have made, whether in the form of funds (loans, shares or otherwise), materials, equipment, services, processes, patents, techniques or otherwise . . ." (Emphasis added.)

This provision complements and strengthens the guarantees of non-discriminatory treatment and freedom from interference with management and control which are contained in Article III of the Treaty[4]. The terms of Article I, "shall not be subjected", are imperative and unqualified. Unlike Article III of the Treaty, Article I is not limited by any reference to national treatment or to domestic law. It thus establishes a standard of protection for United States nationals independent of the standards of treatment accorded Italian or third country nationals or corporations. Article I prohibits, in absolute terms, governmental measures which are either "arbitrary or discriminatory", and which prevent United States investors from effectively controlling and managing companies which they have established or acquired in Italy.

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[1] Letter of the Secretary of State dated 25 January 1952, contained in the Message from the President of the United States transmitting the Supplementary Agreement, Senate Print Exec. H, 82nd Cong., 2nd Sess., p. 2 (Ann. 88). *See*, Chapter I, n. 1, p. 70, *supra*.

[2] Senate of the Republic, Parliamentary Proceedings, Legislature III, Bills and Reports — Documents, 1958-1960, N. 931-A, p. 4, Sent to the Office of the President on 18 July 1960 (Ann. 89).

[3] Ann. 89, pp. 2-3.

[4] The rights referred to in Article I *(b)* are addressed in Chapter III, *infra*.

As set forth above, the requisition clearly prevented Raytheon and Machlett from exercising their management and control of ELSI. In order to establish a violation of Article I, therefore, it remains to be shown that the requisition was an "arbitrary or discriminatory measure".

In accordance with Article 31 of the Vienna Convention on the Law of Treaties, which in this respect codifies established customary international law, a treaty should be interpreted in accordance with "the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose"[1]. The object and purpose of this Treaty in general, and of this Article and formula in particular, indicate that the prohibition of "arbitrary or discriminatory measures" should be construed broadly, to protect investors against governmental action which violated the basic principles of non-discrimination and "fair play" which underlie the Treaty. In hearings before the United States Senate, the Department of State witness stated that:

> "The basic aim of the [investment] provisions [is] to safeguard the investor against the nonbusiness hazards of foreign operations, . . . [such as] [i]nequitable tax statutes, confiscatory expropriation laws, rigid employment controls, special favors to State-owned businesses, drastic exchange restrictions, and other discriminations against foreign capital[2]."

As explained in the Report of the President to the Italian Chamber of Deputies:

> "The [Supplementary] Agreement proposes, above all, to eliminate any discriminatory measure that one of the two countries might adopt to the prejudice of citizens or juridical persons of the other contracting party, any measure aimed at impeding management or effective control of enterprises for which they have received the required license to purchase or establish, or any measure aimed at obstructing the exercise of their rights relative to such enterprises or to investments of any type[3]."

As is indicated by the above statement, and by the use of the disjunctive "or" in the phrase "arbitrary or discriminatory", Article I prohibits "arbitrary" measures as distinct from, and in addition to, "discriminatory measures". The prohibition of "arbitrary" measures conveys above all the commitment of the respective Governments not to injure the investments and related interests of foreign investors by the unreasonable or unfair exercise of governmental authority. Following standard dictionary definitions, an "arbitrary" act may be one which is characterized by absolute power or an abuse of discretion. "Arbitrary actions" include those which are not based on fair and adequate reasons (including sufficient legal justification), but rather arise from the unreasonable or capricious exercise of authority[1]. The terms "oppressive" and "unreasonable" are thus synonyms of "arbitrary"[2].

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[1] Vienna Convention on the Law of Treaties, Art. 31 (1), UN doc. A/CONF.39/27, p. 293 (1969).

[2] Remarks of Harold F. Linder, Deputy Assistant Secretary of State for Economic Affairs (Ann. 86, p. 394).

[3] Chamber of Deputies, Parliamentary Proceedings, Legislature III, Documents — Bills and Reports, N. 537, pp. 1-2, Presented to the Office of the President 8 November 1958 (Ann. 90).

As used in Italian and United States legal practice with reference to governmental action, "arbitrary" actions include those which are unreasonable, in the sense that they are not based on sufficient or legitimate reasons, or are unduly unjust or oppressive. The Italian Constitutional Court has interpreted the Italian constitutional guarantee of impartial public administration as prohibiting the promulgation of arbitrary or unreasonable regulations[3]. Similarly, under Law No. 1034 of 6 December 1971 which governs regional administrative tribunals, one of the bases for review of Italian administrative acts is excess of authority *(eccesso di potere)*. This concept includes both misuse of power *(sviamento di potere)* and inequality of treatment *(disparità di trattamento)*, which in turn require that all administrative actions be free of arbitrariness and discrimination[1].

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[1] *See*, e.g., *Ballentine's Law Dictionary*, p. 88 (3rd ed., 1969); *Black's Law Dictionary*, p. 96 (5th ed., 1979); *Shorter Oxford English Dictionary*, p. 91 (1944); *Webster's New International Dictionary of the English Language*, p. 110 (3rd ed., 1961). *See also*, G. Devoto and G. C. Oli, *Vocabolario Illustrato della Lingua Italiana*, p. 25 (1983) ("*arbitrario*" defined as "*irregolare, abusivo, ingiustificato, fatto o detto ad arbitrio*" (irregular, illicit, unlawful, unjustified, done or said in violation)).

[2] Roget's *International Thesaurus*, secs. 627.5 and 737.15 (3rd ed., 1962). A number of United States investment protection treaties prohibit, variously, "arbitrary and discriminatory" or "unreasonable and discriminatory" measures. *See*, e.g., Panama, Art. II (2), 21 *International Legal Materials*, p. 1227, at p. 1230 (1982) (ratification pending); Belgium, Art. 4 (2), 14 *United States Treaties* 1284, at p. 1291. The United States regarded these terms ("arbitrary" and "unreasonable") as equivalent. *See*, e.g., the United States interpretation of Article IV (1) of the Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, *signed* 15 August 1955, *entered into force*, 16 June 1957, 284 *UNTS* 93, 8 *UST* 899, forbidding application of "unreasonable or discriminatory measures":

> "Government conduct which does not intrinsically violate international law is nevertheless unlawful if it is arbitrary or it discriminates against aliens. Thus, actions by the Government of Iran which otherwise might have been lawful were unlawful if the government engaged in these actions arbitrarily or directed them against US nationals." ("Memorandum of the Department of State Legal Adviser on the Application of the Treaty of Amity to Expropriations in Iran", 22 *International Legal Materials*, p. 1408, at p. 1411 (1983).)

Similar clauses, prohibiting not only discriminatory but also unreasonable, unfair, or arbitrary treatment, are also found in investment protection treaties between other nations. For example, the agreement concerning the promotion and reciprocal protection of investments between the Republic of Cameroon and the United Kingdom stipulates in Article 2 (2) that:

> "Neither party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party."

The corresponding French text prohibits "measures arbitraires ou discriminatoires". ICSID, *Investment Promotion and Protection Treaties*, 1982 Booklet, p. 41, at pp. 42 and 49. *See also*, e.g., investment protection treaties between Panama and Switzerland (Art. 2 *(a)*: "measures indues ou discriminatoires"), *ibid.*, 1983 Booklet, p. 63, at p. 64; the Belgium-Luxembourg Economic Union and Rwanda (Art. 3 (2): "toute mesure injustifiée ou discriminatoire"), *ibid.*, p. 81, at p. 83. Still other treaties, rather than prohibiting unfair or unequal treatment, affirmatively guarantee fair and equitable treatment. *See*, e.g., the Federal Republic of Germany and the Peoples Republic of China (Art. 2: assurance of "fair and equitable treatment"), *ibid.*, p. 43, at p. 44; Kuwait and Pakistan (Art. 2 (2): assurance of "fair and equitable treatment"), *ibid.*, p. 17, at p. 18.

[3] Corte Costituzionale, 30 January 1980, n. 10, I *Giurisprudenza Costituzionale*, 1980, p. 67, at p. 91; Corte Costituzionale, 15 February 1980, n. 16, I *Giurisprudenza Costituzionale*, 1980, p. 137 at p. 143.

Similar standards in United States jurisprudence derive from the constitutional guarantees of equal protection of the law and due process and are found in the federal Administrative Procedure Act, among other statutes. The Act provides, in pertinent part, that

> "a reviewing court shall . . . hold unlawful and set aside agency action . . . found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[2]".

The provision has been interpreted as requiring the court to "consider whether the [agency] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"[3].

Other municipal legal systems as well prohibit abitrary governmental action of this character. In France, for example, in accordance with decisions of the highest French administrative court, the Conseil d'Etat, administrative action will be considered "arbitrary" if taken without due regard for the factors and legal principles governing the legitimate exercise of discretion in a particular case[4]. As stated by de Laubadere, a typical example of such improper use of authority is the use of police power for a goal other than public security, peace or well-being, "for example, a financial goal"[5]. The "classic model" which he cites is police orders limiting the use of a public pier in order to reduce the maintenance expense to the commune[6]. Similar standards are in force in the Federal Republic of Germany under section 40 of the Federal Law on Administrative Procedure of 1976, Verwaltungsverfahrensgesetz of 25 May 1976, BGBl. I 1749 (1976), which provides:

> "If an administrative authority is authorized to act according to its discretion, it must exercise its discretion according to the purpose of the authorization and observe the legal limits of the discretion[7]."

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[1] Rossano, *L'Eguaglianza Giuridica nell'ordinamento Costituzionale*, p. 450 (1966); Sandulli, I *Manuale di Diritto Amministrativo*, pp. 620-624, sec. 141 *(e)* (1982).

[2] United States Code, Title 5, sec. 706 (2) (A) (1982) (Ann. 91).

[3] *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 416 (1970). *See also*, *Motor Vehicles Manufacturers Assoc.* v. *State Farm Insurance Co.*, 463 U.S. 29 (1983).

[4] *Société Glace Service*, 26 July 1985, No. 51.083, *Recueil des décisions du Conseil d'Etat*, ("*Recueil Sirey*"), 1985, p. 236; *Caminade*, 13 January 1983, No. 27.966. Under French administrative law, arbitrary administrative acts may be annulled through the procedure of the *recours pour excès de pouvoir*. *See*, e.g., Vedel and Delvolvé, *Droit administratif*, pp. 807-811 (9th ed., 1984).

[5] "The typical example [of *détournement de pouvoir*] is that of police powers, which, by their nature, can only be exercised for a goal of security, peace, or well-being, and not for some other objective of general interest, for example, a financial objective (the classic model of annulling police orders limiting the usage of a public pier in order to reduce the expense of upkeep to the commune: Decision of the Conseil d'Etat, 12 November 1927, *Bellescrize*, p. 1048. (Translation. André de Laubadere, 1 *Traité de droit administratif*, p. 599 (9th ed., by J. C. Venezia and Y. Gaudemet, 1984).)

[6] *Ibid. See also*, e.g., *Sieur Beaugé*, Conseil d'Etat, 4 July 1924, *Recueil Sirey*, p. 641 (mayor's order requiring ocean bathers to change clothes in local bath-houses motivated by financial interest of the village, annulled as *détournement de pouvoir*); *Caisse de Compensation pour la Décentralisation de l'Industrie Aéronautique*, Conseil d'Etat, 8 July 1955, *Recueil Sirey*, p. 398 (refusal to approve the budget of establishment in order to provoke its liquidation annulled as *détournement de pouvoir*).

[7] Translation. This provision represents the concretization of the general prohibition against arbitrary action *(allgemeines Willkürverbot)* deduced from Articles 3 and 20 of the Basic Law *(Grundgesetz)* of the Federal Republic of Germany. The German Federal Constitutional Court has reaffirmed this general prohibition on numerous occasions. *See*

In international law as well, the term "arbitrary" is used to describe prohibited actions which constitute an unreasonable, improperly motivated, or unduly unjust or oppressive use of otherwise legitimate governmental authority. Thus, for example, a variety of otherwise lawful actions, such as expulsion of aliens, arrest, detention, deprivation of nationality, cancellation of contracts, and deprivation of property may be prohibited when "arbitrary"[1]. In this concept, an "arbitrary" action is one which is unjust or unreasonable in light of the relevant international standards[2]. More generally, the concept of "abuse of rights" illustrates the general usage of the term "arbitrary" to refer to governmental actions which are unreasonable, improperly motivated, or unduly unjust or oppressive[3].

The requisition of ELSI's plant was precisely the sort of arbitrary action which was prohibited by Article I *(a)*. Under both the Treaty and Italian law, the requisition was unreasonable and improperly motivated. The requisition was

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generally, G. Leibholz and H. J. Rinck, *Kommentar zum Grundgesetz* (6th ed., 1985), Art. 3, annotations 2-5; Art. 20, annotation 20; K. Obermayer, *Kommentar zum Verwaltungsverfahrensgesetz* (1983), §40, annotation 76 *(b)* (1).

[1] *See*, e.g., C. F. Murphy, "Limitations upon the Power of a State to Determine the Amount of Compensation Payable to an Alien upon Nationalization", in 3 *The Valuation of Nationalized Property in International Law*, pp. 56-62 (R. Lillich, ed., 1975) (arbitrary expropriation); American Law Institute, *The Foreign Relations Law of the United States, (Second Restatement)* (1965) ("American Law Institute, *Second Restatement*"), sec. 193 (arbitrary breach of contract) (*see also*, Tent. draft No. 7, 1986, sec. 712: arbitrary impairment of property or other economic interests); *International Covenant on Civil and Political Rights*, UN doc. A/Res/2200 A (1960), Articles 6 (deprivation of life), 9 (arrest or detention), 12 (right to enter one's own country), 17 (interference with privacy, family, home or correspondence); *Universal Declaration of Human Rights*, UN doc. A/Res/217(III) (1948), Articles 9 (arrest, detention or exile), 12 (interference with privacy, family, home or correspondence), 15 (deprivation of nationality), 17 (deprivation of property).

[2] As one commentator has stated with respect to the use of the term "arbitrary" in the Universal Declaration of Human Rights, "the reason for the use of the words 'arbitrary' or 'arbitrarily' was to protect individuals from both 'illegal' and 'unjust' acts". P. Hassan, "The Word 'Arbitrary' As Used in the Universal Declaration of Human Rights: 'Illegal' or 'Unjust'?", 10 *Harvard International Law Journal*, p. 225, at p. 254 (1969). *See also*, P. Hassan, "The International Covenant on Civil and Political Rights: Background and Perspective on Article 9 (1)", 3 *Denver Journal of International Law and Policy*, p. 153 (1973); Jiménez de Aréchaga, "The Background to Article 17 of the Universal Declaration", 8 *Journal of the International Commission of Jurists*, No. 2, p. 34 (1968); F. V. Garcia-Amador, Fourth Report on State Responsibility, *Yearbook of the International Law Commission 1959*, Part II, para. 24, p. 7 (UN doc. A/CN.4/119, para. 24).

[3] In *Case concerning the Barcelona Traction, Light, and Power Company, Limited*, for example, the Government of Belgium equated the concepts of "arbitrary" administrative action, *détournement de pouvoir*, and "abuse of rights". *See*, e.g., oral argument (second phase) in 8 *Memorials, Pleadings and Documents*, pp. 35-43; submissions, *reproduced in* the *Judgment (Second Phase), I.C.J. Reports 1970*, pp. 12, 17. *See also*, e.g., 1 *Oppenheim's International Law*, p. 345 (8th ed., by H. Lauterpacht, 1955):

> ["Abuse of right] occurs when a State avails itself of its right in an arbitrary manner in such a way as to inflict upon another State an injury which cannot be justified by a legitimate consideration of its own advantage."; and

G. Schwarzenberger, *International Law and Order*, p. 100:

> "The hard core of situations, in relation to which the hypothesis of the abuse of rights remains potentially relevant, is the arbitrary or unreasonable exercise of absolute rights . . . Thus, ultimately, the issue reduces itself to that of the arbitrary or unreasonable exercise of rights or powers within the exclusive jurisdiction of States."

See also, Murphy, *op. cit.*, at pp. 59-62; Garcia-Amador, *op. cit.*, at paras. 22-29.

found to be illegal under Italian domestic law for precisely this reason: it was "destitute of any juridical cause which may justify it or make it enforceable"[1].

Apart from considerations of Italian law, moreover, the requisition was "arbitrary" for purposes of the Supplement. Its object and effect were to prevent Raytheon and Machlett from protecting their investment, without any justification which can be viewed as legitimate in terms of the governing principles of the Treaty.

The declaration of a public emergency in this case was a mere device; if the closing of the plant was an "emergency", it was an emergency of Italy's own creation. Raytheon and Machlett had given the Italian authorities every opportunity to take legitimate steps to prevent ELSI from closing, but the Italian authorities declined to do so. Instead, they sought to force Raytheon and Machlett to keep ELSI open by the sheer exercise of power. The requisition was not used to prevent ELSI from closing; as the Prefect noted, Italy took no steps to keep the plant in operation, but merely seized it. In short, the planned closing was not a *bona fide* public emergency, nor was the requisition a *bona fide* response.

The purpose of the requisition appears to have been to create the appearance of action, while allowing time for IRI to step in to take over the plant. The Prefect noted the apparent intent to show the local press that governmental authorities were "fac[ing] the problem", notwithstanding that they did nothing concrete to resolve the problem[2]. At the same time, IRI was developing plans to expand into this area, but was not yet ready to do so.

This motive is discriminatory. As noted above, Article I *(a)* prohibits "arbitrary or discriminatory" measures without qualification. To "discriminate" is "to make distinctions in treatment, show partiality *(in favor of)* or prejudice *(against)*"[3]. The term "discriminatory" thus embraces discrimination in favor of government-controlled enterprises. The Treaty explicitly recognizes the need to protect against discriminatory action in favor of publicly owned or controlled enterprises[4]. The purpose of the Supplement was to strengthen these protections, and in particular to protect against, "special favors to State-owned businesses"[5]. Here IRI's interests were directly contrary to Raytheon's and Machlett's, and the Government intervened to advance its own commercial interests at the latter's expense. This is a particularly clear-cut departure from the Treaty principle of "fair play" and the specific guarantee of Article I *(a)* of the Supplement.

The requisition thus was an "arbitrary or discriminatory measure" for purposes of the Treaty. It was an unreasonable action which did not rest on legitimate grounds, neither under Italian law nor under the governing principles of the Treaty. It was precisely the sort of "refined technique", contrary to the fundamental principles of "equitable treatment", and "fair play", which Article I *(a)* was intended to prohibit. Accordingly, the United States submits that the requisition was an arbitrary and discriminatory measure which effectively prevented Raytheon and Machlett from exercising management and control of ELSI, in violation of Article I *(a)* of the Supplement.

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[1] Ann. 76, p. 362, *infra.*

[2] Ann. 76, p. 363, *infra.*

[3] *Webster's New World Dictionary of the American Language*, p. 403 (1982) (emphasis in original). The Italian word "discriminazione" is defined "distinzione operata nel corso di un grudizio o di una classificaziane" ("a distinction made in the course of a judgment or classification"), G. Devoto and G. C. Oli, *Vocabolario illustrato della lingua italiana*, p. 811 (1983).

[4] *See*, e.g., Art. XVIII of the Treaty and para. 2 of the Protocol.

[5] Ann. 86, p. 395, *infra.*

Section 3. Article VII of the Treaty

The guarantees of management and control established by Article III of the Treaty and Article I of the Supplement are further buttressed by Article VII of the Treaty, which provides in part:

> "The nationals, corporations and associations of either High Contracting Party shall be permitted to . . . dispose of immovable property or interests therein within the territories of the other High Contracting Party upon the following terms:
>
> . . . .
>
> *(b)* in the case of nationals, corporations, and associations of the United States of America, the right to acquire, own and dispose of such property upon terms no less favorable than those which are or may hereafter be accorded by the state, territory or possession of the United States of America . . . under the laws of which such corporation or association is created or organized, to . . . corporations . . . of the Italian Republic."

The Treaty thus guarantees that a United States corporation which has invested in Italy is entitled to dispose of immovable property of interests therein upon the same terms as would an Italian corporation investing in the United States investor's state of incorporation.

Raytheon is incorporated in the State of Delaware[1] and Machlett is incorporated in the State of Connecticut[2]. Under Article VII of the Treaty the Government of Italy undertook to allow these United States corporations to dispose of immovable property and interests therein upon terms no less favorable than would be accorded by these states to Italian corporations.

Under the laws of both Delaware and Connecticut, corporations may be dissolved and their assets sold pursuant to determinations by their boards of directors and shareholders[3]. For example, Delaware provides in section 271 of Title 8 of its Code:

> "Every corporation may at any meeting of its board of directors or governing body sell, lease or exchange all or substantially all of its property and assets . . . upon such terms and conditions and for such consideration . . . as its board of directors or governing body deems expedient and for the best interests of the corporation, when and as authorized by a resolution adopted by the holders of a majority of the outstanding stock of the corporation entitled to vote thereon . . .[4]"

The courts of Delaware have emphasized that:

> "there is no statutory limitation on the right of a Delaware corporation to sell its assets on such terms and conditions and for such consideration as its board of directors deems expedient and in the best interests of the corporation[5]".

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[1] Ann. 7.

[2] Ann. 16.

[3] *See Delaware Code Annotated*, Title 8, secs. 271, 275 (1983 and Supp. 1986) (Ann. 92); Connecticut General Statute, Annotated, secs. 33-372, 33-375 (West 1958 and Supp. 1986) (Ann. 93). These constitutional guarantees may be enforced through procedures made available to property owners under state law. *See*, e.g., *Delaware Code Annotated*, Title 10, secs. 6101-6115 (1975) (Ann. 94).

[4] *See* Ann. 92.

[5] *Alcott* v. *Hyman*, 184 A.2d 90, 94 (Delaware Court of Chancery, 1962), *affirmed* 208 A.2d 501 (Delaware Supreme Court, 1965).

Thus, under the reciprocal guarantees of the Treaty, Raytheon and Machlett were entitled to liquidate ELSI's assets pursuant to the decision of its shareholders and board of directors. The requisition which foreclosed this planned action violated Article VII of the Treaty.

Carrying the reciprocity point further, if Delaware or Connecticut were to take the immovable property of a corporation for a lawful public use, they would be obligated to make compensation for that property under fundamental provisions of the United States Constitution[1] and the respective state constitutions[2]. Constitutional rights affecting property interests are guaranteed to both natural persons and corporations[3]. The right to compensation for a taking of interests in property is guaranteed to foreign as well as United States investors[4].

Under United States law, this duty to compensate owners of property for interference with their property rights arises not only from a formal expropriation decree but also from government actions, including interference with the use of the property, that amount to a taking of property[5]. Thus, in *Benenson* v. *United States*[6], the United States Court of Claims ruled that where the United States Government effectively barred property owners from exercising their right to demolish improvements to their real property or otherwise use the property as they wished, the United States violated the constitutional rights of the property owners and was required to make appropriate compensation.

Most of the assets seized by the Mayor of Palermo and subsequently acquired by the Government of Italy consisted of ELSI's manufacturing plant and other immovable property[7]. As discussed above, ELSI's owners had the right under the Treaty to dispose of this property as they saw fit. The United States submits that by denying the owners that right, the Government of Italy violated Article VII of the Treaty.

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[1] The fifth Amendment of the United States Constitution provides: "No person shall be . . . deprived of life, liberty or property without due process of law, nor shall private property be taken for public use, without just compensation."

[2] Section 8 of the Delaware Constitution provides: "[N]or shall any man's property be taken or applied to public use without the consent of his representatives, and without compensation being made."

Section 11 of the Connecticut Constitution provides: "The property of no person shall be taken for public use, without just compensation therefor."

[3] The general principle of equal treatment under the United States Constitution for corporations and natural persons was set forth by the Supreme Court of the United States in *Grosjean* v. *American Press Co.*, 297 U.S. 233 (1936) (corporations are entitled to equal protection of the laws of the United States). *See*, e.g., *Fulton Market Cold Storage Co.* v. *Cullerton*, 582 F.2d 1071 (7th Cir. 1978), *cert. denied* 439 U.S. 1121 (1979) (corporate property owner can bring action against county and state taxing officials for wrongful assessments of property value); *Sterngrass* v. *Bowman*, 563 F. Supp. 456 (S.D.N.Y. 1983) (corporation may bring action against city for wrongful decisions affecting corporation's use of real property).

[4] *Russian Volunteer Fleet* v. *United States*, 282 U.S. 481 (1931) (when the United States expropriates the property of an alien friend, the Fifth Amendment of the United States requires that it pay just compensation equivalent to the full value of the property). Thus, non-resident aliens owning property within the United States "as well as citizens are entitled to the protection of the Fifth Amendment". *United States* v. *Pink*, 315 U.S. 203, 228 (1942). *Cf.*, *Sardino* v. *Federal Reserve Bank of New York*, 361 F.2d 106, 111 (2d Cir.), *cert. denied* 385 U.S. 898 (1966). ("This country's present economic position is due in no small part to European investors who placed their funds at risk in its development, rightly believing they were protected by constitutional guarantees.")

[5] *See*, e.g., *United States* v. *Clarke*, 445 U.S. 253, 257 (1980); *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393 (1922).

[6] 548 F.2d 939 (Court of Claims, 1977). *See also*, *Amen* v. *City of Dearborn*, 718 F.2d 789 (6th Cir. 1983), *cert. denied* 465 U.S. 1101 (1984) (defendant city's course of conduct designed to force residents to sell property to city violated United States Constitution).

[7] *See*, e.g., Anns. 20, 51, 57, 67 and 72.

CHAPTER III

IMPAIRMENT OF INVESTMENT RIGHTS AND INTERESTS

Section 1. The Requisition

Article I *(b)* of the Supplement provides, in pertinent part, that:

> "corporations . . . of either High Contracting Party shall not be subjected to . . . *arbitrary or discriminatory measures* within the territories of the other High Contracting Party resulting particularly in . . . *impairing* . . . *legally acquired rights and interests* in such enterprises [other than management and control] or in the investments which they have made, whether in the form of funds (loans, shares or otherwise), materials, equipment, services, processes, patents, techniques or otherwise." (Emphasis added.)

As discussed in connection with Article I *(a)* above, Article I of the Supplement is intended to extend the safeguards for foreign investment contained in the Treaty to reach "the more refined techniques through which governments might effectively destroy investments made by foreigners . . ."[1]. As explained in the contemporaneous Department of State report to the United States Senate:

> "[I]t is believed to serve a useful purpose in that it affords one more ground, in addition to all the other grounds set forth in the treaty, for contesting foreign actions which appear to be injurious to American interests. A given measure of a foreign government might, for example, be fully consistent with the national treatment or most-favored-nation treatment rules of the treaty, and also short of expropriation, but yet arbitrary and unreasonable as it affected some vested American interest in the country concerned. In that event, the only treaty ground for protest might be general language such as is found in [Article I *(b)* of the Supplement][2]."

Article I *(b)* thus extends the basic principles of fair play and non-discrimination to all forms of governmental action which are injurious to investors, prohibiting any "arbitrary or discriminatory measures" which impair not only the rights, but also the interests, of United States investors in Italian corporations.

As discussed above, the requisition of ELSI's assets was an arbitrary and discriminatory measure. It not only effectively blocked Raytheon's and Machlett's exercise of management and control over ELSI, but "result[ed] particularly in . . . impairing [their] other legally acquired rights and interests" in ELSI. The requisition thus violated Article I *(b)*, in addition to Article I *(a)*, of the Supplement.

The impairment of Raytheon's and Machlett's rights and interests occurred because the requisition, as intended, prevented the voluntary liquidation of ELSI and caused it to file for bankruptcy. As the court-appointed Trustee in Bankruptcy stated in his complaint against the Minister of the Interior and the Mayor of Palermo:

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[1] R. R. Wilson, describing the "new formulas on property protection" contained in United States investment-protection treaties developed in the late 1950s. R. R. Wilson, *United States Commercial Treaties and International Law*, p. 121 (1960).

[2] *See* State Department Comments in Ann. 86, p. 422, *infra*.

> "In consideration of the heavy legal and economic situation created by the appealed order of requisition, Raytheon-ELSI S.p.A. was obliged to file for bankruptcy, which was declared by decision of this Tribunal on May 7-16, 1968[1]."

Without control over ELSI's plant or assets, an orderly, voluntary liquidation was simply impossible. Moreover, since ELSI's assets could not be liquidated, the point would soon be reached where its debts could not be paid as they became due. Hence, there was therefore no alternative but for ELSI to file a petition in bankruptcy[2].

By frustrating the voluntary liquidation, the requisition made the closing of ELSI much more costly to Raytheon and Machlett than it would have been had this governmental intervention not occurred. Raytheon was required to pay some 5.8 billion lire (US$9,300,000) to those bank creditors of ELSI to whom Raytheon had made guarantees. As discussed in Part VI below, these payments were substantially more than Raytheon would have paid had it been allowed to proceed with the planned liquidation. In addition, Raytheon recovered nothing on its open accounts with ELSI, totalling over 1.3 billion lire (US$1,830,000). Finally, both Raytheon and Machlett lost the small return on their investment which the liquidation could have provided[3].

Further, the liquidation plan would have permitted payment of ELSI's unsecured loans. Under the bankruptcy, however, unsecured creditors received less than 1 per cent of the amounts claimed. As predicted by the President of the Sicilian Region[4], the government-controlled banks which held these loans brought suit against Raytheon to recover the amounts due. While the lawsuits all resulted in judgments for Raytheon, they caused Raytheon substantial additional and unnecessary expense[5].

In addition to Raytheon's and Machlett's direct capital contribution, Raytheon's guarantees of loans made to ELSI and its open accounts for goods and services provided to ELSI are "investment rights and interests" which are protected by Article I *(b)*. This Article expressly protects not only contributions to capital, but anything else provided by an investor to an Italian corporation in which it invests "whether in the form of funds (loans, shares, or otherwise), materials, equipments, services, processes, patents, techniques or otherwise".

Both the open accounts and the guarantee payments are investments within this broad definition: "whether in the form of funds . . . or otherwise". The explicit inclusion of "loans" in particular demonstrates that credit arrangements between a United States investor and an Italian corporation are within the scope of protected investment rights and interests under Article I *(b)*. The open accounts are amounts owed to Raytheon and thus constitute a "loan". Raytheon's guarantees were originally in the nature of a contingent "loan" representing a commitment to provide a specified amount of funds for ELSI's benefit on demand. When the guarantees were paid, they become an actual loan of funds to ELSI. Thus, both the guarantees and open accounts are protected investment rights and interests within the scope of Article I *(b)*.

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[1] Ann. 79, p. 369, *infra*.

[2] *Supra*, pp. 35-37, and Ann. 26, para. 12.

[3] *See* discussion at pp. 107-108, *infra*, and Table at p. 108. *See also* Chapter VI, n. 4, p. 104, *infra*.

[4] Ann. 38, p. 297, *infra*.

[5] See discussion at p. 109, *infra*; Ann. 40, para. 7 and Exhibit C.

Raytheon's financial loss in defending against the Italian bank lawsuits similarly constitutes an impairment of protected rights and interests. The banks were suing Raytheon for payment of ELSI's loans. If these suits had been successful, Raytheon would have been required to make further contributions of funds on ELSI's behalf.

The United States accordingly submits that the requisition was an arbitrary and discriminatory measure by the Government of Italy which impaired Raytheon's and Machlett's investment rights and interests in ELSI, in violation of Article I *(b)* of the Supplement.

Section 2. The Subsequent Course of Conduct

The harmful effects of the requisition were confirmed and compounded by the subsequent conduct of Italian officials, which was in further violation of Article I *(b)* of the Supplement. The requisition, indeed, was only the first step in a series of concerted actions taken by the Italian Government and IRI authorities to acquire ELSI's plant and related assets at less than fair market value, while leaving Raytheon with responsibility for paying ELSI's outstanding debts[1]. Having requisitioned the plant and caused ELSI's bankruptcy, the Government of Italy discouraged private bidders, boycotted the auctions itself, and worked out special arrangements for a piecemeal take-over directly with the bankruptcy authorities.

The object of these actions was to secure ELSI's facilities for IRI, on the terms and at the below-market price which IRI desired, while also responding to the political pressure brought by ELSI's former workers. These actions were discriminatory measures prohibited by Article I of the Supplement, since they were taken with the clear object and effect of favoring a public Italian enterprise at Raytheon's expense. They resulted in the further impairment of Raytheon's investment rights and interests. Thus, not only did the Government of Italy wrongfully cause the bankruptcy, it also proceeded wrongfully to exploit the bankruptcy which it had caused[2].

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[1] It is a settled rule of State responsibility that the State is responsible for the actions and omissions of the judicial and administrative authorities, including regional and local government officials. *See*, e.g., G. Schwarzenberger, 1 *International Law*, pp. 625-627 (1957); Rousseau, *Droit international public*, pp. 358, 374 (1953); I. Brownlie, *System of Law of Nations, State Responsibility* (Part I), p. 144 (1983); C. Eagleton, *The Responsibility of States in International Law*, pp. 70-73 (1928); and authorities cited at n. 1 and n. 3, Chapter II, p. 75, *supra*. Moreover, irrespective of its general status for purposes of attribution, the actions of IRI in this case (and of its subsidiaries) are also attributable to the Government of Italy, since IRI was not only owned and controlled by the Government, but was also acting as an arm and agent of the Government. The decision to take over ELSI's assets through IRI was a central government decision, conceived even before the requisition and, subsequently, publicly announced as such. As stated by Christenson, "The criteria for attributing conduct of [state-owned enterprises] to the State seem to be . . . attribution if the entity serves State purposes, thus becoming part of the State's apparatus". G. A. Christenson, "The Doctrine of Attribution in State Responsibility", *International Law of State Responsibility for Injuries to Aliens*, p. 333 (R. Lillich, ed., 1983); *see also*, on attribution of acts of agents generally, *Chiessa* case, 15 *Reports of International Arbitral Awards*, p. 399; 1 *Oppenheim's International Law*, p. 342 (8th ed. by H. Lauterpacht, 1955); B. Cheng, *General Principles of International Law as Applied by International Courts and Tribunals*, pp. 192-193 (1953).

[2] For other examples of cases involving allegations of a wrongful course of conduct in connection with bankruptcy proceedings *see*, e.g., *Antoine Fabiani (France* v. *Venezuela)*, *summarized in* M. Whiteman, 3 *Damages in International Law*, pp. 1785-1788; *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3; *Tim-*

Before the requisition was issued, the President of the Sicilian Region had informed Raytheon that IRI wanted to take over ELSI's facilities for its own use, but was not ready to do so immediately. He attempted to convince Raytheon that it should keep ELSI open at its own expense until IRI was ready to acquire it. He noted that, if Raytheon did not do so, the requisition would remain in effect and ELSI would have no alternative but to declare bankruptcy. Moreover, he predicted, in such event the Government would make the result as costly as possible for Raytheon[1]. Raytheon, nevertheless, declined to make any further investment in ELSI, seeing no prospect of recovering such funds[2]. When ELSI accordingly did declare bankruptcy, the Government of Italy turned its attention to the bankruptcy process.

The Government of Italy's objective was to acquire ELSI's facilities for IRI at the lowest possible price. Toward that end, it incrementally consolidated both the appearance and the substance of a take-over of ELSI's facilities, which enabled it ultimately to dictate the sale price.

Even before any bankruptcy auctions were held, the public at large had been informed that the Government would take over ELSI's facilities. On 25 July 1968, the Minister of Industry announced to the Italian Parliament that the Government of Italy intended to take over ELSI's plant through an IRI subsidiary[3]. On 13 November, after inconclusive negotiations with Raytheon for a comprehensive settlement, the Government issued a press release announcing that IRI-STET would take over ELSI at the Government's request[4]. In response to this announcement, workers at the Raytheon plant took down the name-plate "ELSI" at the entrance to the plant and put up a new name-plate, "STET"[5]. The IRI subsidiary which was to run the plant, ELTEL, was formed in Palermo in December of 1968[6]. At the same time, IRI announced its plans for rehiring workers when it reopened the plant in 1969[7]. All of these developments were publicly reported[8]. Thus, by the first scheduled bankruptcy auction on 18 January 1969, the Government's take-over of ELSI's plant and assets was to all appearances a certainty.

IRI, however, had not yet reached final agreement with the Trustee on its purchase of ELSI's assets. Nor did it bid at the first auction[9]. The first auction was for all of ELSI's assets, with a minimum bid set at 5 billion lire[10]. It appears that IRI was not interested in purchasing all of ELSI's assets at this price, but only in purchasing the plant and certain related equipment for some 4 billion lire[11]. According to the President of the Sicilian Region, IRI had reached agreement with the bankruptcy Trustee on such a sale as early as October 1968,

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berlane Lumber Co. v. *Bank of America, N. T. & S. A.*, 549 F.2d 597, 605 (9th Cir. 1976; *Claims of "Salvador Commercial Company" et al.*, 15 *Reports of International Arbitral Awards*, p. 467.

[1] *Supra*, pp. 55-56; Ann. 38.

[2] *Supra*, p. 56; Ann. 39.

[3] Ann. 46.

[4] "Without prejudice to the undertaking of the STET Group to build in Palermo a new plant to manufacture in the field of telecommunications, the IRI-STET Group, solicited by the Government . . ., has communicated its willingness to intervene in taking over the [ELSI] plant and in commencing also new production." (Ann. 47.)

[5] Anns. 48 and 49.

[6] Ann. 26, para. 20; Ann. 59, p. 325, *infra*.

[7] Ann. 53.

[8] Anns. 50, 53 and 54.

[9] Ann. 52.

[10] Ann. 51.

[11] *Supra*, p. 60; Ann. 59, p. 325, *infra*.

but the agreement had broken down over IRI's unwillingness to purchase any of ELSI's other assets[1].

While these terms were not to IRI's liking and it boycotted the auction, it nevertheless proceeded with its plans to take over ELSI. On 30 January it was publicly reported that IRI had reached agreement with ELSI's former workers on a plan for rehiring[2]. It also was reported that, faced with pressure from the former employees, IRI had agreed with the Trustee and with the unions on an interim plan to reopen the plant under a lease arrangement, pending agreement on the final terms of sale[3].

In late March 1969, therefore, ELTEL officially proposed to the Trustee that it be permitted to lease ELSI's plant for a period of 18 months at an entirely nominal rate, without any commitment whatsoever to purchase the plant or assets at any price[4]. Raytheon's representative on the creditors committee pointed out that, if such a lease were approved, ELTEL would be in a position to dictate the terms of final sale[5]. The lease nevertheless was approved, on the ground that ELSI's plant needed to be operated and maintained[6].

Upon taking possession of the plant, ELTEL sought and received permission to purchase ELSI's work in process for less than one-half its appraised value[7]. This first piecemeal sale without open public bidding was justified in large part by the lease[8]. Finally, with ELTEL in possession of and operating ELSI's plant, the bankruptcy authorities agreed to sell the plant and related equipment to ELTEL for 4 billion lire (US$6,400,000)[9]. Thus, for a little over 4 billion lire ELTEL acquired ELSI's plant, equipment, and inventory, including work in process — assets initially valued at over 12 billion lire (US$19,200,000)[10].

Thus, the Government of Italy skillfully took advantage of its own commanding position and its initial wrongful requisition to acquire ELSI's plant and assets at a reduced price for the use of their own commercial enterprise.

Their actions were discriminatory within the meaning of Article I *(b)* of the Supplement. As discussed at page 80 above, the term "discriminatory", as used in the Treaty and Supplement, expressly encompasses favored treatment for government-controlled enterprises. The actions, moreover, contributed to the impairment of Raytheon's and Machlett's rights and interests as investors. Having caused the bankruptcy, the Government of Italy further shaped its results, to the detriment of Raytheon and Machlett and the benefit of IRI.

This result was furthered, moreover, by yet another arbitrary and discriminatory action — the Prefect's failure to rule on the legality of the requisition until after ELTEL had acquired ELSI's assets[11]. During this entire period, the Prefect of Palermo refrained from ruling on the lawfulness of the requisition. When the Prefect finally ruled on 22 August 1969, it was 16 months after the appeal had been filed, but only 48 days after ELTEL finally purchased ELSI's assets. As discussed below, the Prefect's delay was exceptional. This delay was "arbitrary", in that it was unfair, unreasonable, and unsupported by any legitimate considerations. This delay was, moreover, "discriminatory", in that no comparable delay appears to have occurred in any previous similar appeal brought by an Italian-controlled corporation[1].

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[1] *Ibid.*

[2] Ann. 54.

[3] *Supra*, pp. 59-60; Anns. 54, 55 and 56.

[4] Anns. 60 and 61.

[5] *Supra*, pp. 60-61; Ann. 60, p. 327, *infra*.

[6] Ann. 64, p. 341, *infra*. The need for such operation and maintenance was, it may be noted, entirely the responsibility of Italian authorities. As is discussed at Chapter IV, *infra*, instead of reopening and maintaining the plant after the requisition, the Sicilian authorities allowed the workers to occupy it. Thus, as a result of the requisition and the subsequent failure to protect the requisitioned property, the plant had been left idle and not maintained for almost a year.

[7] Ann. 65.

[8] *Supra*, p. 62; Ann. 69.

[9] *Supra*, p. 63; Anns. 72 and 74.

[10] Ann. 13, Schedule C1. *See* Chapter IV, n. 5, p. 97, *infra*.

[11] As discussed further in Chapter IV, *infra*, this delay in ruling also constituted a failure to afford the protection due to Raytheon under Article V of the Treaty.

Thus, the United States submits that, beginning with the requisition and throughout the bankruptcy, Italian authorities engaged in a series of arbitrary and discriminatory measures resulting in the impairment of Raytheon's and Machlett's investment rights and interests, in violation of Article I *(b)* of the Supplement.

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[1] *See* further, discussion at pp. 98-99, *infra*.

CHAPTER IV

WRONGFUL TAKING OF INTERESTS IN PROPERTY

With the requisition, Italy embarked on a course of activity aimed at acquiring the bulk of ELSI's assets for a public enterprise at less than fair market value. In addition to the treaty violations indicated above, the requisition constituted a taking of property without due process of law or just compensation, in violation of Article V (2) of the Treaty. The requisition definitively ended Raytheon and Machlett's ability to use and dispose of assets which they owned through ELSI. It led directly to a forced bankruptcy sale of the assets, primarily to an Italian State enterprise at a price substantially below their fair market price. The requisition, which later was found unlawful, thus constituted a taking of property giving rise to a right to "just" compensation. Because the taking was accomplished through means specifically proscribed by the treaty — that is, interfering with management and control and failing to accord the guarantees of due process — just compensation encompasses not only the actual market value of the property taken, but also any additional amount necessary to offset consequential damages of the taking.

Section 1. The Taking of Interests in Property

Article V (2) of the Treaty provides that:

> "The *property* of nationals, corporations and associations of either High Contracting Party *shall not be taken* within the territories of the other High Contracting Party without due process of law and *without the prompt payment of just and effective compensation.*" (Emphasis added.)

The Protocol to the Treaty expressly extends this guarantee of compensation to

> "interests held directly or indirectly by nationals, corporations and associations of either High Contracting Party in property which is taken within the territories of the other High Contracting Party".

The provision aims "to assure that the investments of the ultimate party in interest, lying behind the corporate façade, are safeguarded"[1]. In other words, the treaty unambiguously protects the investment interest of United States shareholders in Italian companies whose property is taken by the Italian Government.

The "taking" of property to which the treaty refers encompasses a multitude of activities having the effect of infringing property rights. Under international law, a "taking" generally is recognized as including not merely outright expropriation of property, but also unreasonable interference with its use, enjoyment, or disposal. As Christie stated in 1962:

> "Such cases as there are recognize the principle laid down by the commentators, that interference with an alien's property may amount to expropriation even when no explicit attempt is made to affect the legal title to the

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[1] R. R. Wilson, *United States Commercial Treaties and International Law*, p. 201 (1960).

> property, and even though the respondent State may specifically disclaim any such intention[1]."

Subsequently, this principle has been repeatedly reaffirmed by international tribunals and commentators[2]. The recent and numerous awards of the Iran-United States Claims Tribunal on this question are illustrative. As stated by the Tribunal in *Starrett Housing*, for example:

> "it is recognized in international law that measures taken by a State can interfere with property rights to such an extent that these rights are rendered so useless that they must be deemed to have been expropriated, even though the State does not purport to have expropriated them and the legal title to the property formally remains with the original owner[3]".

Of particular relevance here, it repeatedly has been recognized that interference with management and control sufficient to constitute a "taking" of property will be considered to have occurred where the foreign investor has no reasonable prospect of regaining management and control. As stated by Dolzer, commenting on the recent *Revere* case:

> "it cannot be doubted that a long-term interruption of effective control by the owner of the use of property in its fundamental economic function would trigger the duty to compensate also under the substantive international law concept of expropriation[4]".

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[1] G. C. Christie, "What Constitutes a Taking of Property Under International Law?", 38 *British Year Book of International Law*, p. 307, at p. 309 (1962).

[2] *See*, e.g., *Certain German Interests in Polish Upper Silesia, Merits, Judgment No. 7, 1926, P.C.I.J., Series A, No. 7*; *Norwegian Shipowners' Claims (Norway* v. *United States of America)*, 1 *Reports of International Arbitral Awards*, p. 308, at p. 335; *The United States of America on Behalf of Marguerite de Joly de Sabla* v. *The Republic of Panama*, reported at 28 *American Journal of International Law*, p. 602 (1934); R. Higgins, "The Taking of Property by the State", 176 *Recueil des cours*, p. 259, at p. 324 (1982-III); L. Sohn and R. Baxter, "Convention on the International Responsibility of States for Injuries to Aliens" ("revised Harvard Draft Convention"), *reprinted in* F. V. Garcia-Amador, L. Sohn and R. Baxter, *Recent Codification of the Law of State Responsibility for Injuries to Aliens*, p. 133, at p. 204 (1974); "OECD Draft Convention on the Protection of Foreign Property", 7 *International Legal Materials*, p. 117, at pp. 125-126 (1968). *See further*, authorities cited at n. 3 and n. 4, *infra*.

[3] *Starrett Housing Corp., et al.* v. *Islamic Republic of Iran*, Awd. No. 32-24-1, 4 *Iran-United States Claims Tribunal Reports* (1983-III), p. 122, at p. 154. *See also*, e.g., *Thomas Earl Payne* v. *Islamic Republic of Iran*, Awd. No. 245-335-2, at p. 10 (8 August 1986) ("It is well settled in this Tribunal's practice, as elsewhere, that property may be taken under international law through interference by a State in the use of that property or with the enjoyment of its benefits."); *Harza Engineering Company* v. *Islamic Republic of Iran*, Awd. No. 19-98-2, 1 *Iran-United States Claims Tribunal Reports*, p. 499, at p. 504 (1981-1982) ("[A] taking of property may occur under international law, even in the absence of a formal nationalization or expropriation, if a government has interfered unreasonably with the use of property"); *ITT Industries, Inc.* v. *Islamic Republic of Iran*, Awd. No. 47-156-2 (Aldrich, concurring), 2 *Iran-United States Claims Tribunal Reports*, p. 348, at pp. 351-352 (1983-I); *Tippets, Abbet McCarthy, Stratton* v. *TAMS-AFFA Consulting Engineers of Iran, et al.*, Awd. No. 141-7-2, 6 *Iran-United States Claims Tribunal Reports*, p. 219, at pp. 225-226 (1984-II); *Foremost Tehran, Inc., et al.* v. *The Islamic Republic of Iran*, Awd. No. 220-37/231-1, p. 22 (11 April 1986); *Phelps Dodge Corp., et al.* v. *Islamic Republic of Iran*, Awd. No. 217-99-2, p. 14 (19 March 1986); *International Technical Products Corp., et al.* v. *Islamic Republic of Iran, et al.*, Awd. No. 196-302-2, p. 46 (10 October 1985).

[4] Translation. R. Dolzer, "Nationale Investitionsversicherung und völkerrechtliches Enteignungsrecht: Bemerkungen zum Revere Copper Fall", 42 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, p. 480, at p. 505 (1982). In *Revere Copper and Brass*,

In *SEDCO, Inc.* v. *National Iranian Oil Company*, for example, the Iran-United States Claims Tribunal found the appointment of "temporary" managers for an Iranian company controlled by a United States corporation to be a taking of that corporation's shareholder interest because "there [was] no reasonable prospect of return of control . . . as of that date"[1]. The Tribunal noted, *inter alia*, that prior to the appointment of managers, Iran had announced an intention to form a new government company to take over activities then performed by the joint company SEDIRAN. It concluded that "the appointed managers were thus 'temporary', not in the sense that control would be returned to SEDCO but only in the eventuality of SEDIRAN becoming utterly defunct"[2]. Iran's clear intention not to return the company to shareholder control from the time of appointment of managers was deemed evidence of a taking as of that date.

Similarly, in *Thomas Earl Payne*, the Tribunal found that:

> "The effect [of the appointment of 'temporary' managers] is to strip the original managers of affected companies of all authority and to deny shareholders significant rights attached to their ownership interest. While one of the purposes of the Law of 16 June 1979 is the appointment of managers on a 'provisional' basis, the sum effect in this case was the deprivation of any interest of the original owners in the companies once they were made subject to provisional management by the Government[3]."

By this established standard, the requisition was a permanent taking. The Government of Italy physically seized ELSI's property with the object and effect of ending Raytheon and Machlett's management and control, in order to prevent them from conducting the planned liquidation. While the requisition order by its terms was effective for only six months, Italian officials indicated at the time that it would be extended as necessary to prevent Raytheon and Machlett from conducting the liquidation. They indicated that a new public enterprise would be formed to manage ELSI on an interim basis, while IRI completed arrangements for acquiring ELSI's assets. Thus, from the time the requisition was imposed, notwithstanding the pendency of ELSI's pending appeal of the order[4], Raytheon

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Inc. v. *Overseas Private Investment Corporation ("Revere")*, the Tribunal found that Jamaica had engaged in "expropriatory action" because, in repudiating its long-term contractual commitments to Revere, it had prevented the company from exercising effective control over its operation in Jamaica. Focussing on the decision-making process in the Jamaican subsidiary, it noted that "[f]reedom to make rational management decisions is at the heart of effective control. Jamaica's actions were found to have undermined this process notwithstanding the fact that Revere's subsidiary retained its formal rights and property. 56 *International Law Reports*, p. 258, at pp. 290-293, 295 (1980).

[1] Awd. No. ITL 55-129-3, pp. 40-41 (28 October 1985).

[2] Awd. No. ITL-55-129-3, pp. 42-43.

[3] Awd. No. 245-335-2, p. 11.

[4] A close parallel may be found in the claim of *Sabine G. Helbig*, in which the Foreign Claims Settlement Commission of the United States held that the taking had occurred when the property was seized by the Hungarian Office of the Commissioner for Abandoned Property, notwithstanding the fact that a partially successful appeal of that action was not decided until almost one year later. The Commission reasoned that "[t]he fact that the authorities subsequently ordered that a portion of the property be returned to claimant, which order was never executed, does not constitute a change in the date when the property was actually taken from claimant". *In the Matter of the Claim of Sabine G. Helbig*, Claim No. Hung.-20590, Decision No. Hung.-941 (1958), Foreign Claims Settlement Commission of the United States, *Tenth Semiannual Report to the Congress*, p. 51, at p. 52 (1959).

and Machlett had no reasonable prospect of ever recovering management and control of ELSI, and had no alternative but to declare bankruptcy[1].

It also follows from the same principle and authority that, where interference with management and control constitutes a taking, the scope of the taking is determined by the extent of actual interference. The purported scope of the seizure, and the extent to which title to assets is ultimately transferred to the government, are immaterial. In *Certain German Interests in Polish Upper Silesia*, for example, the Permanent Court held that, by seizing a nitrate factory, the Polish Government had also expropriated the patents and contract rights of the management company[2]. Similarly, in the *Norwegian Shipowners' Claims* case, the United States claimed that it had requisitioned only partially completed ships, but was found to have expropriated the contracts for completed ships, with which it interfered[3]. More recently, in *Starrett Housing Corp.* v. *Islamic Republic of Iran*, the Iran-United States Claims Tribunal found that in expropriating the subsidiaries' physical assets, Iran incurred liability not only for the value of those assets but also for the value of a construction project to be carried out by the subsidiary, the profit which the claimant would have received in management fees and the loans claimant made to the subsidiary for the purposes of the project[4]. Similarly, in *Revere* the measure of loss was Revere's total net investment in the Jamaican subsidiary, even though Revere formally retained ownership, as Jamaica's interference with effective control of the enterprise necessarily affected the entire operation[5].

The requisition was thus a taking of *all* of ELSI's assets, even though the requisition order did not expressly seize, nor did ELTEL ultimately acquire, all of these assets.

Accordingly, the United States submits that the requisition was a permanent taking of Raytheon and Machlett's property interests in ELSI, within the meaning of Article V (2) of the Treaty.

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[1] It is also well-established that governmental action to bring about a forced sale at less than fair market value constitutes a taking, irrespective of whether the purchaser is an official entity. *See*, e.g., Christie, *op. cit.*, at p. 327; E. Lauterpacht, "The Drafting of Treaties for the Protection of Investment", in *The Encouragement and Protection of Investment in Developing Countries*, p. 18, at p. 30 (*International and Comparative Law Quarterly Supplemental Publication*, No. 3) (1962); D. F. Vagts, "Coercion and Foreign Investment Rearrangements", 72 *American Journal of International Law*, p. 17 (1978); B. Weston, "'Constructive Takings' under International Law: A Modest Foray into the Problem of 'Creeping Expropriation' ", 16 *Virginia Journal of International Law*, p. 103, at pp. 133-148 (1975); B. Wortley, *Expropriation in Public International Law*, pp. 1-2, 127 (1959); R. Higgins, *op. cit.*, at p. 326; M. H. Muller, "Compensation for Nationalization: A North-South Dialogue", 19 *Columbia Journal of Transnational Law*, p. 35, at p. 36, n. 6 (1981); *Société du Chemin de Fer Ottoman de Jaffa à Jerusalem et Prolongements* v. *United Kingdom*, *described in* J. G. Wetter and S. M. Schwebel, "Some Little-Known Cases on Concessions", 40 *British Year Book of International Law*, p. 183, at p. 222 (1964); *Case of Gowen & Copeland (United States of America* v. *Venezuela)*, 4 J. B. Moore, *International Arbitrations to Which the United States Has Been a Party*, p. 3354 (1898) *("History of International Arbitrations")*; *Zwack* v. *Kraus Bros. & Co.*, 237 F.2d 255 (2nd Cir. 1956) *aff'g* 133 F. Supp. 929 (Southern District of New York 1955); *Firma Wichert* v. *Wichert*, *Annual Digest and Reports of Public International Law Cases*, p. 23 (H. Lauterpacht, ed., 1948) (Switzerland Federal Tribunal); "O.E.C.D. Draft Convention on the Protection of Foreign Property", *op. cit.*, at pp. 125-126.

[2] *Certain German Interests in Polish Upper Silesia*, *op. cit.*, at p. 541. As the cases cited in n. 1, *supra*, relating to "forced sales" demonstrate, it is immaterial whether the government itself ultimately acquires all, or any, of the expropriated assets.

[3] *Norwegian Shipowners' Claims*, *op. cit.*, at p. 334.

[4] *Starrett Housing Corp.* v. *Islamic Republic of Iran*, *op. cit.*, at pp. 154-156.

[5] *Revere*, *op. cit.*, at p. 296. *See* n. 4, pp. 90-91, *supra*.

Section 2. Absence of Due Process

The first protection set forth by Article V ([illegible]) of the Treaty is the protection afforded by "due process of law". The meaning of "due process" here is the due process required by international law[1]. The purpose of this international minimum standard is

> "to secure protection against arbitrary and unjust treatment in any particular in which the Government of a country does not accord its own nationals as liberal treatment as that which is recognized by international law[2]".

As discussed above, the process by which this taking was accomplished was not in accordance with governing standards of either domestic or international law. The requisition, without which this acquisition would not have been accomplished, was not only an "arbitrary and discriminatory" measure in contravention of the standards of treatment required by the Treaty, but was actually contrary to Italian domestic law.

Moreover, Raytheon and Machlett were denied effective legal recourse against the requisition order by the Prefect's exceptional delay of some 16 months in ruling on their appeal. As set forth in Chapter V, section 1, *infra*, this unwarranted delay constituted a denial of justice under international law.

The means by which the taking of ELSI's assets was accomplished thus did not meet international minimum standards of due process, as required by Article V (2) of the Treaty.

Section 3. Absence of Just Compensation

It is a basic and well-settled principle of international law that a State which takes the property of an alien must afford "full" or "just" compensation for what has been taken[3]. This principle is affirmed in Article V (2) of the FCN Treaty, which specifies that property shall not be taken "without the prompt payment of just and effective compensation[1]". Just compensation ordinarily entails payment of the fair market value of the property taken, measured at the time of the taking[2], excluding any diminution in value caused by the government action against it, or the perceived risk thereof[3].

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[1] *See* R. R. Wilson, "Property-Protection Provisions in United States Commercial Treaties", 45 *American Journal of International Law*, p. 83, at p. 99 (1951); R. R. Wilson, *The International Law Standard in Treaties of the United States*, pp. 101, 247 (1953).

[2] Memorandum of the Solicitor of the State Department discussing the meaning of a similar promise of due process protection in a 1933 United States-Germany commercial treaty, *quoted in* R. R. Wilson, "Property-Protection Provisions in United States Commercial Treaties", *op. cit.*, at p. 99, n. 84 (1951). *See also*, e.g., *The United States of America on behalf of Harry Roberts, Claimant* v. *The United Mexican States, Opinions of the Commissioners under the Convention concluded September 8, 1923 between the United States and Mexico*, p. 100, at p. 105 (1927); *The United States of America on behalf of George W. Hopkins* v. *United Mexican States, ibid.*, p. 42, at p. 47; *The United States of America on behalf of L. F. H. Neer and Pauline E. Neer, Claimants* v. *The United Mexican States, ibid.*, p. 71, at p. 73; C. Eagleton, *Responsibility of States in International Law*, pp. 83-84 (1928); M. Whiteman, 1 *Damages in International Law*, pp. 22-23 (1937); E. Borchard, "The Minimum Standard of Treatment of Aliens", 38 *Michigan Law Review*, p. 445, at p. 447 (1940); L. Sohn and R. Baxter, Revised Harvard Draft Convention, *op. cit.*, at pp. 236-237. *See also*, authorities cited at Chapter V, n. 3.

[3] *See*, e.g., *Delagoa Bay Railway (United States of America and United Kingdom* v. *Portugal), summarized in* J. B. Moore, *op. cit.*, Vol. 2, at p. 1896; *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, pp. 677-678. *("Chorzów Factory, Merits")*; *SEDCO, Inc.* v. *National Iranian Oil Co.*, Awd. No. ITL 59-129-3, p. 11 (27 March 1968); *AGIP Spa* v. *Government of the Popular Republic of the Congo*, 67 *International Law Reports*, p. 319, at p. 339; *AMCO Asia Corporation* v. *Indonesia*, 24 *International Legal Materials*, p. 1022, at p. 1037 (1985); I. Brownlie, *Principles of Public International Law*, p. 538 (1979); B. Clagett, "The Expropriation Issue before the Iran-United States Claims Tribunal: Is 'Just Compensation' Required by International Law or Not", 16 *Law and Policy in International Business*, p. 813, at p. 838 (1984).

In the *Norwegian Shipowners' Claims*, for example, "just compensation" was awarded equivalent to the "real market value" of certain shipbuilding contracts[4]. More recently, the Iran-United States Claims Tribunal has applied the "just compensation" clause of the 1955 Treaty of Amity between those two countries as requiring compensation equal to the fair market value of property taken, defined as:

> "the amount which a willing buyer would have paid a willing seller for the shares of a going concern, disregarding any diminution of value due to the nationalization itself or the anticipation thereof, and excluding consideration of events thereafter that might have increased or decreased the value of the shares[5]".

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[1] In United States practice, the terms "just" and "prompt, adequate and effective" compensation are used interchangeably. For example, in correspondence with the Mexican Government setting forth the prompt, adequate and effective standard, Secretary of State Cordell Hull used that phrase and the term "just compensation" interchangeably. *See* G. H. Hackworth, 3 *Digest of International Law*, p. 654 (1942). United States courts have also regarded the terms as synonymous. *See*, e.g., *Banco Nacional de Cuba* v. *Chase Manhattan Bank*, 505 F. Supp. 412 (S.D.N.Y. 1980), *aff'd as modified*, 658 F.2d 875 (2d Cir. 1981). In the most recent public summary of the international legal principles applicable to expropriation, the Department of State, through the Legal Adviser, interpreted similar language in the 1955 Treaty of Amity with Iran in this fashion. *See*, "Memorandum of the Department of State Legal Adviser on the Application of the Treaty of Amity to Expropriations in Iran", 22 *International Legal Materials*, p. 1406, at p. 1407 (1983). *See also*, e.g., B. Clagett, *op. cit.*, at pp. 841-843.

[2] *See*, e.g., *Chorzów Factory, Merits*, *op. cit.*, at p. 677; *Norwegian Shipowners' Claims*, *op. cit.*, at p. 334; *Spanish-Moroccan Claims*, 2 *Reports of International Arbitral Awards*, p. 615; *Lighthouse Arbitration*, 23 *International Law Reports*, p. 299, at p. 301 (1956); *ITT Industries, Inc.* v. *The Islamic Republic of Iran*, *op. cit.*; *American International Group, Inc.* v. *The Islamic Republic of Iran*, Awd. No. 93-2-3 (19 December 1983); 4 *Iran-United States Claims Tribunal Reports*, p. 96 (1983-III), at p. 102; *Starrett Housing Corp.* v. *The Islamic Republic of Iran*, *op. cit.*; as discussed in Chapter VI, *infra*, full compensation also should include interest.

[3] *See*, e.g., *American International Group* v. *The Islamic Republic of Iran*, *op. cit.*, at pp. 106-107; Article 10 (2) of the Revised Harvard Draft Convention, which describes just compensation for a taking of property "in terms of the fair market value of the property . . . unaffected by this or other takings or by conduct attributable to the State and designed to depress the value of the property in anticipation of the taking": F. V. Garcia-Amador, L. Sohn and R. Baxter, *op. cit.*, p. 133, at p. 203 (1974); *SEDCO, Inc.* v. *National Iranian Oil Co.*, Awd. No. ITL 55-129-3, p. 42 (28 October 1985); *ITT Industries, Inc.* v. *Islamic Republic of Iran*, *op. cit.*, at p. 355 (Aldrich, concurring); American Law Institute, *Second Restatement*, sec. 188, comment *b*; Clagett, *op. cit.*, at pp. 862-863; R. Lillich, "The Valuation of Nationalized Property by Foreign Claims Settlement Commission", in 1 *The Valuation of Nationalized Property in International Law*, p. 95, at p. 97, n. 13 (R. Lillich, ed., 1972); Muller, *op. cit.*, at p. 43; C. Olmstead, "Nationalization of Foreign Property Interests, Particularly Those Subject to Agreement With the State", 32 *New York University Law Review*, p. 1122, at p. 1133 (1957); I. Foighel, *Nationalization and Compensation*, p. 250 (1964).

[4] *Op. cit.*, at pp. 332, 339.

[5] *INA Corporation* v. *The Government of the Islamic Republic of Iran*, Awd. No. 184-161-1 (13 August 1985), at p. 31. *See also*, *American International Group, Inc.* v. *The Islamic Republic of Iran*, *op. cit.*, at p. 102; *Thomas Earl Payne and The Government of the Islamic Republic of Iran*, *op. cit.*

At least where the taking is wrongful, moreover, as for instance when it violates a treaty obligation, the compensation owed is not limited to the actual market value of the property taken. Following from the general principle, elaborated at greater length in Chapter VI, that compensation for a wrongful act should correspond to *restitutio in integrum*, compensation for a wrongful taking should redress all of the injuries suffered as a result of the taking. In the *Chorzów Factory* case, for example, the Permanent Court of International Justice found Poland's seizure of the factory to have been in violation of treaty obligations and therefore "wrongful" as a matter of international law[1]. The Court concluded that:

> "It follows that the compensation due to the German Government is not necessarily limited to the value of the undertaking at the moment of dispossession, plus interest to the date of payment[2]."

This principle is still valid today. In *TOPCO*, for example, sole arbitrator Professor Dupuy noted that:

> "*restitutio in integrum* being in spite of everything the basic principle, it is this principle which (in conformity with the rule laid down by the Permanent Court of International Justice in the Chorzów Factory case . . .) will serve as the reference for calculating the amount of a possible pecuniary indemnity . . .[3]".

Even in *LIAMCO* v. *Libya*, which is noteworthy among recent cases for the limited measure of compensation applied[4], sole arbitrator Dr. Mahmassani unequivocably affirmed the continuing validity of authorities following the *Chorzów Factory* principle in cases where a taking is wrongful: "The forementioned [authorities], whether in theoretical juristic opinion or in case law, apply undoubtedly to cases of wrongful taking of property[5]."

In the present case, therefore, the compensation provided for the taking of ELSI's assets should have corresponded to *restitutio in integrum*, as discussed in further detail in Chapter VI, *infra*. It is manifest that such full compensation was not provided. The Government of Italy did not even pay fair market value for the property which it ultimately acquired, much less for the whole of ELSI's assets which were taken.

For purposes of compensation for the taking of ELSI, ELSI should be valued as a going concern as of 1 April 1968. Notwithstanding the precarious financial situation which had led the shareholders to decide to liquidate, ELSI remained an on-going enterprise which had, in addition to certain tangible assets, significant intangible assets which placed the fair market value of the company appreciably above that of the physical assets standing alone. These intangible assets included established customer and supplier relationships, developed and fully functioning methods and processes, access to all necessary patents, licenses, technical assistance, and other technology, and an established name and reputation for quality products[1].

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[1] *Chorzów Factory, Merits, op. cit.*, at p. 677.

[2] *Ibid.*

[3] *Texaco Overseas Petroleum Co./California Asiatic Oil Co.* v. *Government of the Libyan Arab Republic* (Award on the Merits), 17 *International Legal Materials*, p. 1, at p. 35 (1977).

[4] *Clagett, op. cit.*, at p. 858.

[5] *Libyan American Oil Company (LIAMCO)* v. *Government of the Libyan Arab Republic, reprinted in* 20 *International Legal Materials*, p. 1, at p. 70 (1981). *See also*, e.g., Brownlie, *op. cit.*, at p. 539; D. P. O'Connell, 2 *International Law*, p. 1205 (1965); S. Friedman, *Expropriation in International Law*, p. 218 (1953); *Chorzów Factory, Merits, op. cit.*, at p. 47; M. H. Mendelson, "Agora: What Price Expropriation? Compensation for Expropriation: The Case Law", 79 *American Journal of International Law*, p. 414, at p. 416 (1985); G. White, *Nationalization of Foreign Property*, p. 154 (1961). Authorities also recognize that breach of a stabilization clause in a private contract gives rise to a "special right of compensation" for the party wronged. E. Jiménez de Aréchaga, "International Law in the Past Third of a Century", 159 *Recueil des cours*, p. 1 at p. 306 (1978-I); S. Chowdhury, "Permanent Sovereignty over Natural Resources", in *Permanent Sovereignty over Natural Resources in International Law*, p. 2 at p. 39 (K. Hossain and S. Chowdhury, eds., 1980-1984); F. V. Garcia-Amador, *The Changing Law of International Claims*, pp. 391-395 (1984).

Such intangible assets are of significant value to potential purchasers. As stated by Mr. Scopelliti, former Chief Financial Officer and Controller of Raytheon's European management subsidiary:

> "In my experience, companies are often willing to pay a considerable sum simply for the name, technology, and established customers of an electronics business, in addition to the tangible assets. It is not unusual for buyers of going concerns in the electronics industry to pay a price in excess of twice their book value[2]."

Knowing this, Raytheon and Machlett had decided, in the liquidation, to preserve these going concern aspects of ELSI's business, in order to sell it for its maximum value[3].

International tribunals have recognized that such intangible assets are valuable assets, which must be considered in determining compensation owed for takeovers of companies. In *Chorzów Factory*, for example, the Permanent Court of International Justice defined the "undertaking", for purposes of valuation, as "including lands, buildings, equipment, stocks, *available processes, supply and delivery contracts, goodwill and future prospects*"[4]. Similarly, in *American International Group, Inc.* v. *The Islamic Republic of Iran*, the Iran-United States Claims Tribunal held that:

> "the appropriate method is to value the company as a going concern, taking into account not only the net book value of its assets but also such elements as good will and likely future profitability, . . .[5]".

Under the particular circumstances of this case, and in view of the difficulty of independently estimating at this time ELSI's fair market value as a going concern almost 20 years ago, the United States submits that a fair measure of that value is given by the aggregate book value of ELSI's assets as of 31 March 1968. This book value does not include ELSI's intangible assets as a going concern, and the book values of other assets which are included are not, *ipso facto*, fair market values[6]. Taken as a whole, however, these omissions and adjustments counter-balance each other, so that in this case book value is a fair measure of compensation[1]. As stated by Raytheon's former Vice-President and Controller, Mr. Arthur Schene:

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[1] *Supra*, pp. 47 and 52.

[2] Ann. 17, para. 9.

[3] *Supra*, p. 52; Ann. 15, para. 50.

[4] *Chorzów Factory, Merits, op. cit.*, at p. 51. (Emphasis added.)

[5] *American International Group, Inc.* v. *The Islamic Republic of Iran*, Award No. 93-2-3, *op. cit.*, at p. 21.

[6] In principle, "book value" does not reflect going concern or fair market value, because it does not take into account the capacity of an asset to produce future income. Compensation at book value is therefore ordinarily considerably less than full compensation. C. F. Amerasinghe, for example, describes book value as "the usual minimum" in state practice. C. F. Amerasinghe, "The Quantum of Compensation for Nationalized Property", in 3 *The Valuation of Nationalized Property in International Law*, p. 91, at p. 126 (R. Lillich, ed., 1985). In this particular case, however, in view of the considerations set forth above, book value is in fact a fair measure of going concern value.

> "The aggregate book valuation of the assets represent a fair measure of their value on a going concern basis. Any downward adjustments in the valuation of specific assets would have been more than offset by a reasonable amount of goodwill and the upward adjustment of other assets. For example, had IRI moved in in 1968 and taken over the operation with their ability to open up markets, at least full asset value should have been realized by them[2]."

In short, as of 1 April 1968, Italy expropriated ELSI as a going concern. Raytheon and Machlett planned to liquidate it as a going concern, and Italy planned to operate it as a going concern. Italy's method of expropriation, however, served as a means to avoid paying full compensation for ELSI's assets at going concern value.

As of 30 March 1968, ELSI's book value was 17.05 billion lire[3]. The Trustee ultimately received, however, less than 6.4 billion lire (US$10,240,000) for ELSI's assets[4]. Italy itself paid only slightly more than 4 billion lire (US$6,400,000) for the assets which it ultimately acquired — assets which had a book value of 12 billion lire (US$19,200,000)[5]. The value of other assets, including substantial accounts receivable which were never collected, was lost in the requisition and bankruptcy process. In addition, because the expropriation was accomplished by wrongful actions in violation of the Treaty and Supplement, just compensation in this case must include not only compensation for the value of property taken, but also for the other damages resulting from the wrongful actions. As discussed in Chapter VI, *infra*, this includes in particular substantial legal expenses incurred by Raytheon in connection with the bankruptcy, in defending against Italian court actions by creditor banks, and in pursuing its claim for redress. Thus, there can be no doubt that Raytheon and Machlett were denied payment of fair market value for the property which was effectively taken on 1 April 1968 by the requisition.

Accordingly, the United States submits that Italy has taken Raytheon and Machlett's interests in ELSI, without due process or payment of just compensation, in violation of Article V (2) of the Treaty.

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[1] The only other contemporaneous estimate of the market value of ELSI's assets is the minimum liquidation value, which had been prepared on a "quick sale" basis, deliberately omitting intangible assets and understating others. *Supra*, p. 52. It should be considered an assured minimum value and does not represent a viable alternative to book value as an approximation of going concern value.

[2] Ann. 13, para. 15.

[3] *Ibid. See also*, Ann. 30, Attachment B, Schedule A.

[4] *See* Ann. 13, Schedule C1.

[5] Ann. 13, Schedule C1. It is difficult to determine precisely from the available information how many of ELSI's tangible assets were left in the plant by the time Italy completed its acquisition. However, it appears that Italy acquired, in addition to the plant and equipment, nearly all of the remaining inventory. As shown in Schedule C1, "inventory" includes work in process and finished goods as well as materials and supplies.

CHAPTER V

FAILURE TO PROVIDE PROTECTION AND SECURITY

Section 1. Delay in Ruling on the Challenge to the Requisition Order

When the Government of Italy requisitioned ELSI's plant and equipment on 1 April 1968, ELSI promptly appealed to the Prefect of Palermo to set aside this order. The Prefect, however, did not issue his ruling until 22 August 1969. In the meantime, ELSI had gone bankrupt and the Government of Italy had completed purchase of ELSI's plant and equipment. As discussed above, this delay in ruling was an arbitrary and discriminatory measure which impaired Raytheon's and Machlett's investment rights and interests. Under the circumstances, moreover, this delay constituted a denial of justice — more specifically, a denial of procedural justice[1] — in violation of paragraphs (1) and (3) of Article V of the Treaty[2].

Article V (1) of the Treaty states in pertinent part:

> "The nationals of each High Contracting Party *shall receive*, within the territories of the other High Contracting Party, the *most constant protection and security for their* persons and *property, and shall enjoy* in this respect *the full protection and security required by international law.*" (Emphasis added.)

This explicit recognition and adoption of the international law minimum standard of the treatment due to aliens[3] is enhanced by Article V (3), which specifies that the protection and security referred to in Article V (1), assuming "compliance with applicable laws and regulations", shall be no less than that due under national or most-favored-nation standards of treatment. Together, Articles V (1) and V (3) obligate the Government of Italy to afford to United States nationals the international standard, the most-favored-nation standard, or the national standard of protection of property — whichever is highest.

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[1] The concept of "denial of procedural justice" includes injury resulting from a denial of procedural fairness and due process in relation to judicial proceedings. *See*, e.g., The American Law Institute *Second Restatement*, sec. 181 (1965). (*See also* Tent. draft No. 7, sec. 711, comment *a*.)

[2] This denial of procedural justice is also further evidence that Italy's actions were arbitrary in violation of Article I of the Treaty Supplement. *See* Chapter II, *supra*.

[3] The existence of such an international standard of treatment was reaffirmed most recently by this Court in its Order of 15 December 1979 in the *Hostages Case*, which refers to "the treatment due to [nationals] under general rules of international law as aliens within the territory of the foreign state". *United States Diplomatic and Consular Staff in Tehran, Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979*, p. 7, at p. 14. *See also*, e.g., *Certain German Interests in Polish Upper Silesia, Merits, Judgment No. 7, 1926, P.C.I.J., Series A, No. 7*, p. 510, at pp. 523-524; E. Root, "The Basis for Protection to Citizens Residing Abroad", 4 *American Journal of International Law*, p. 517, at p. 527 (1910); C. Eagleton, *Responsibility of States in International Law*, pp. 83-84 (1928); M. Whiteman, 1 *Damages in International Law*, pp. 21-22 (1937); E. Borchard, "The 'Minimum Standard' of the Treatment of Aliens", 38 *Michigan Law Review*, pp. 445 et seq. (1940); A. H. Roth, *The Minimum Standard of International Law Applied to Aliens*, pp. 122-123 (1949); Revised Harvard Draft Convention, *reprinted in* R. V. Garcia-Amador, L. Sohn and R. Baxter, *Recent Codification of the Law of State Responsibility for Injuries to Aliens*, pp. 236-237 (1974).

It is well established that, as a matter of general international law, unreasonable or unwarranted delay in ruling on a case violates the international standard of treatment. In the 1896 decision in the *Fabiani* case, for example, the President of the Swiss Confederation, acting as sole arbitrator, found that:

> "Upon examining the general principles of international law concerning the denial of justice, that is to say the rules common to most legal systems or laid down by doctrine, one concludes that denial of justice includes not only the refusal of a judicial authority to exercise its functions, . . . but also persistent delays on its part in rendering judgment[1]."

As Freeman concludes from the numerous arbitral awards in support of this point in his definitive work, *The International Responsibility of States for Denial of Justice*:

> "Culpable delay on the part of the courts in disposing of cases involving foreigners is one of the most typical instances of denial of justice and as such engages the State's international reponsibility. This point has long been settled . . . In effect, ever since the era of private reprisals it has been axiomatic that unreasonable delays are properly to be assimilated to absolute denials of access[2]."

Ultimately, the premise that a delay in ruling can amount to a denial of justice rests on their equivalence in fact. As Freeman notes:

> "it is obvious that the failure to conduct proceedings with reasonable diligence and despatch may produce the same dire effects for the claimant as though he had been denied a judicial remedy altogether[3]".

The delay of the Prefect in ruling on ELSI's appeal of the requisition of its assets constitutes a culpable denial of justice by this standard. Judged by its practical effect, it constituted a denial of any judicial remedy. When the Prefect finally ruled in ELSI's favor on 22 August 1969, seventeen months after the appeal was filed, the Government of Italy had completed its acquisition of ELSI's plant and equipment. Even though the ruling was ultimately in ELSI's favor, it was too late to have any remedial effect. Not only had any possibility of a voluntary, orderly liquidation been extinguished long before, but also there remained no chance that the ruling might affect the acquisition of ELSI's assets through the bankruptcy[4].

The delay in ruling appears, moreover, to be of an exceptional nature not justified by any legitimate consideration. A prompt ruling on such an appeal was not only possible, but customary. In all previous cases of which the United States is aware in which the 1865 requisition law had been invoked, the Prefect of the relevant jurisdiction had promptly quashed the requisition[1]. ELSI's appeal did not present any special complications justifying this exceptional delay, nor is any reasonable explanation for it apparent. The only conclusion which can be drawn under the circumstances is that this delay was unwarranted and unreasonable, either as the result of negligent or wilful action.

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[1] Translation. Award of the President of the Swiss Confederation in the case of *Fabiani*, in J. B. Moore, 5 *History and Digest of the International Arbitrations to which the United States Has Been a Party*, p. 4878, at p. 4895 (1898).

[2] A. V. Freeman, *The International Responsibility of States for Denial of Justice*, p. 242 (1938). *See also, e.g., The United States of America on behalf of B. E. Chattin, Claimant* v. *The United Mexican States, Opinions of Commissioners*, p. 422, at p. 432 (1927); C. De Visscher, "Le déni de justice en droit international", in 52 *Recueil des cours*, p. 362, at p. 397 (1935); G. Schwarzenberger, 1 *International Law*, p. 621 (3rd ed., 1957); Rousseau, 5 *Droit international public*, p. 69 (1983); and American Law Institute, *Second Restatement*, sec. 181 *(h)*.

[3] Freeman, *op. cit.*, at p. 244.

[4] *Supra*, pp. 64-65. As noted at p. 60, *supra*, the *Prefect* was personally involved in negotiations between IRI and the Trustee.

In conclusion, the United States submits that the delay in ruling on this appeal constituted a failure to accord the "most constant protection and security" and "the full protection and security required by international law" as required by Article V (1). Moreover, because the delay was far in excess of the delay experienced in prior suits involving companies owned by Italian nationals, it also constituted a failure to accord a national standard of protection, as required by Article V (3).

Section 2. Failure to Afford Protection to ELSI's Plant and Premises

As discussed above, once ELSI's plant and equipment had been requisitioned, ELSI's employees began an occupation of the premises that continued, so far as can be determined, up to the re-opening of the plant by ELTEL. This occupation, combined with the idleness of the plant during the requisition, had at least two injurious consequences: it resulted in a deterioration of the plant and related material and equipment, and it impeded the Trustee's efforts to dispose of the plant[2].

The occupation appears to have had the tacit approval of local authorities, who made no effort to prevent or to end it, or otherwise to protect the premises[3]. Either the legal custodians of the plant — first the Mayor, under the requisition, and subsequently the bankruptcy authorities — did not seek, or the police did not provide, the protection which previously had been provided. This failure to afford protection constituted a violation of Article V (1) of the Treaty.

As discussed above, Article V (1) of the Treaty establishes Italy's obligation to provide "the most constant protection and security" to the property of United States nationals, and in particular "the full protection and security required by international law". One well-established aspect of the international standard of treatment is that States must use "due diligence" to prevent wrongful injuries to the person or property of aliens within their territory. If a State fails to use due diligence to prevent such injury, then it is responsible for this omission and is liable for the ensuing damages[4].

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[1] In most other cases, the requisition was quashed in a matter of days and in no case more than 30 days. In this case, the Prefect ruled more than 16 months after the appeal was filed. Ann. 26, para. 10.

[2] *Supra*, pp. 54-55; Ann. 79, p. 369, *infra*; *see also* Ann. 26, paras. 17-18.

[3] The failure of Italian authorities to afford protection after the requisition until at least the date ELSI filed a petition in bankruptcy is addressed in the Affidavit of Mr. Merluzzo, Ann. 21, paras. 20 and 23. Raytheon and Machlett have little direct knowledge of events in Palermo after the bankruptcy. According to the later statements of Avv. Bisconti and the Trustee, however, as reflected in Anns. 26 and 79, it appears that the occupation continued uninterrupted until ELTEL acquired the plant.

[4] *See*, e.g., *Case of the Alabama and her Tender, the Tuscaloosa, summarized in* Moore, Vol. 5, *op. cit.*, p. 4144, at p. 4160; E. Borchard, *Diplomatic Protection of Citizens Abroad*, p. 217 (1915); Eagleton, *op. cit.*, at p. 88; Rousseau, *op. cit.*, at pp. 74-75; 1 *Oppenheim's International Law*, pp. 365-367, 8th ed. by H. Lauterpacht (1955); R. Lillich and J. Paxman, "State Responsibility for Injuries to Aliens Occasioned by Terrorist Activities", 26 *The American University Law Review* (1977), p. 217, at pp. 225-231 and 240-245; Garcia-Amador, *op. cit.*, p. 27; American Law Institute, *Second Restatement*, sec. 183; commentary to Article 11 of International Law Commission draft articles, II *Yearbook of International Law, 1975*, pp. 70-82.

The obligation of a State to exercise "due diligence" does not require that it prevent any injury whatsoever. Rather, the obligation is generally understood to require that a State take reasonable actions within its power to avoid injury when it is, or should be, aware that a risk of injury exists[1]. The precise degree of care that is "reasonable" or "due" depends in part on the circumstances[2]. Where, however, a State entirely fails to use the means at its disposal to provide protection, there can be no doubt that adequate protection has not been provided. Thus, for example, in the *Hostages* case, this Court determined that Iran had breached its obligation to protect foreign nationals, based on the finding that Iran was aware of the need for action and had failed to use the means at its disposal to comply with its obligations[3].

Similarly in this case, Italy should be charged with knowledge of the need for action to protect the plant and be found to have failed to use the means at its disposal to provide appropriate protection. The occupation began only after the Mayor — an Italian government official — had assumed custody of the plant. Italian officials had been following ELSI's situation closely and were well aware of the threat of occupation before it occurred. Prior to the requisition, the police protected the plant, keeping strikers off the premises and allowing only persons with legitimate purposes to enter. The requisition was issued in part to temper the expected outcry from the workers over the actual closing of the plant. Italian officials thus foresaw the situation worsening, yet at the same time they actually decreased their physical protection of the plant[4].

Having deprived Raytheon of the right and ability to protect its own property, Italy had a special duty to protect them against hostile actions[5]. Moreover, having itself assumed custody of the plant, Italy was responsible for its maintenance and care. Instead of enhancing plant security under the requisition, however, Italian officials allowed the occupation to begin and continue without interference and made no apparent effort to protect the premises from the injurious effects of occupation.

Thus, following the requisition, governmental authorities failed to meet even minimum standards of protection for the property in question. Italy failed to use the means at its disposal to continue to keep plant premises free of unauthorized persons, or so far as appears, to preserve and maintain the plant and equipment in any way. Accordingly, the United States submits that the Government of Italy has failed to provide the requisite protection to ELSI's premises in violation of its obligations under Article V (1) of the Treaty.

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[1] *See*, e.g., authorities cited at n. 4, p. 100, *supra*.

[2] *See*, e.g., Eagleton, *op. cit.*, at p. 88, Garcia-Amador, *op. cit.*, at p. 27.

[3] *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3, at pp. 32-33. The Court also referred to Iran's awareness of its obligations. Where a treaty obligation is at issue, however, a State must normally be presumed to be aware of its obligations. *See also*, e.g., *William E. Chapman (USA)* v. *United Mexican States*, 4 *Reports of International Arbitral Awards*, p. 632, at p. 639; Borchard, *op. cit.*, at p. 213; authorities cited at n. 4, p. 100, *supra*.

[4] *Supra*, p. 55; Ann. 21, paras. 20-21.

[5] *Cf.* Case of *Enrique Rau, summarized in* M. Whiteman, *op. cit.*, Vol. 1, p. 26 at p. 27.

CHAPTER VI

THE COMPENSATION DUE TO THE UNITED STATES

Section 1. The Duty to Pay Compensation

It is a fundamental principle of international law that a State which has breached its international obligations incurs a duty to make reparation to the injured State[1]. This general principle applies, *inter alia*, to obligations assumed by treaty. As the Permanent Court of International Justice stated in the *Chorzów Factory* case, "[i]t is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form"[2]. The Permanent Court regarded "reparation as the corollary of the violation of the obligations resulting from an engagement between States"[3]. Even absent an express provision in the international agreement providing for reparation in the event of breach, the offending State is obligated to make reparation. As the Permanent Court stated in *Chorzów*: "Reparation . . . is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself[4]."

This Court has reaffirmed the principle that a State is entitled to reparation for the violation of its treaty rights on several occasions. In the *United States Diplomatic and Consular Staff in Tehran* case, for example, the Court held that the United States was entitled to reparation from Iran for the latter's breach of its treaty obligations:

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[1] As defined by Jiménez de Aréchaga,

> "reparation is the generic term which describes the various methods available to a State for discharging or releasing itself from . . . responsibility. The forms of reparation may consist in restitution, indemnity or satisfaction." ("International Law in the Past Third of a Century", 159 *Recueil des cours*, p. 1, at p. 285 (1978).)

In the *Corfu Channel* case, this Court stated that it follows from the establishment of the responsibility of a State for the breach of an international obligation "that compensation is due". *Corfu Channel, Merits, Judgment, I.C.J. Reports 1949*, p. 4, at pp. 23-24. *See also*, e.g., *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 174, at p. 184; *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3, at pp. 41-42; Article 1 and commentary thereto of Part 1 of the International Law Commission's draft articles on state responsibility, II *Yearbook of the International Law Commission, 1973*, pp. 173-176, and Article 6 (2) of Part 2 of the draft articles, as proposed by the Special Rapporteur, II *Yearbook of the International Law Commission, 1984* (Part Two), p. 100, n. 322; American Law Institute, *Second Restatement*, secs. 164, 165, 168 (1965); Garcia-Amador's draft articles on state responsibility in F. V. Garcia-Amador, L. Sohn and R. Baxter, *Recent Codification of the Law of State Responsibility for Injuries to Aliens*, p. 86 (1974); Revised Harvard Draft Convention, *ibid.*, at p. 143.

[2] *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21 (*"Chorzów Factory, Jurisdiction"*). *See also*, e.g., *Interpretation of Peace Treaties With Bulgaria, Hungary and Romania, Second Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 221, at p. 228; *Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, p. 10, at p. 28; Article 1 of Chapter 1 of the International Law Commission's draft articles on state responsibility, II *Yearbook of the International Law Commission, 1973*, pp. 173-176; Article 17, II *Yearbook of the International Law Commission, 1980* (Part Two), p. 32; Article 5 (2) *(a)* of Part 2 *Report of the International Law Commission, 1985*, pp. 53-54, and proposed Article 6 (2), II *Yearbook of the International Law Commission, 1984* (Part Two), p. 100, n. 322.

[3] *Chorzów Factory, Merits, P.C.I.J., Series A, No. 17*, p. 27.

[4] *Chorzów Factory, Jurisdiction, op. cit.*, at p. 21.

> "[T]he Court finds that Iran, by committing successive and continuing breaches of the obligations laid upon it by the Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations, the Treaty of Amity, Economic Relations, and Consular Rights of 1955, and the applicable rules of general international law, has incurred responsibility towards the United States. As to the consequences of this finding, it clearly entails an obligation on the part of the Iranian State to make reparation for the injury thereby caused to the United States[1]."

This principle has been repeatedly recognized by decisions of other international fora[2], by international commentators[3], and in efforts to codify international law[4].

Section 2. The Measure of Compensation

A. Compensation May Be Measured by the Injury to Raytheon and Machlett

While the State on the international plane always represents its own interests, the compensation to which it is entitled for breach of a treaty obligation can be measured not only by injuries suffered directly by the State, but also by injuries to its nationals as a result of the wrongful action. This principle was confirmed also by the Permanent Court in the *Chorzów Factory* case. In determining the measure of damages due the German Government for Poland's expropriation of German nationals' property in violation of its treaty obligations, the Court stated:

> "It is a principle of international law that the reparation of a wrong [to a State] may consist in an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act which is contrary to international law . . . The reparation due by a State to another does not however change its character by reason of the fact that it takes the form of an indemnity for the calculation of which the damage suffered by a private person is taken as the measure . . . Rights or interests of an individual the violation of which rights causes damage are always in a different plane to rights belonging to a State, which rights may also be infringed by the same act. The damage suffered by an individual is never therefore identical in kind with that which will be suffered by a State: it can only afford a convenient scale for the calculation of the reparation due to the State[5]."

International arbitrators and commentators have similarly recognized that damage to the national as a result of a State's treaty violations may serve as a measure of the compensation owed to the injured State. In the *Forests of Rhodope* case, for example, the arbitrator held that Bulgaria's expropriation of Greek nationals' property in Rhodopia violated the Treaty of Neuilly[1]. In determining the proper measure of compensation due Greece, the arbitrator held that "[t]he damage suffered by the Greek nationals furnishes an equitable measure of the reparation due to the Greek Government"[2]. As noted by Schwarzenberger, while "[t]he damage suffered by the State is not necessarily limited to that of the individual . . . this may offer a convenient measure of the minimum of damage for which reparation is due"[3].

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[1] *United States Diplomatic and Consular Staff in Tehran, op. cit.*, pp. 41-42.

[2] *See*, e.g., *Affaire des Forêts du Rhodope Central (Fond)*, 3 *Reports of International Arbitral Awards*, p. 1405, at p. 1436; *Award Concerning the Claim of George J. Salem*, 2 *Reports of International Arbitral Awards*, p. 1165, at p. 1194.

[3] *See*, e.g., 1 *Oppenheim's International Law*, sec. 156 (8th ed., by H. Lauterpacht, 1955); A. V. Freeman, *The International Responsibility of States for Denial of Justice*, p. 572 (1938); A. D. McNair, 2 *Law of Treaties*, pp. 539-540, 574 (1961).

[4] *See*, e.g., authorities cited at n. 1, p. 102, *supra*.

[5] *Chorzów Factory, Merits, op. cit.*, at pp. 27-28.

In these cases, as in the present case, the treaty provisions in question had only an indirect bearing on the direct financial rights of the respective Governments, and were aimed rather at the protection of the parties' respective nationals. The United States accordingly submits that the losses suffered by Raytheon and Machlett as a result of Italy's violation of the Treaty are the most appropriate and only convenient measure of damages to the United States for violation of its rights under the Treaty in this case[4].

B. ALL OF THE INJURIES SUFFERED BY RAYTHEON AND MACHLETT SHOULD BE INCLUDED IN THE MEASURE OF COMPENSATION

1. The General Principle

The proper measure of compensation is that which redresses all of the injuries occasioned by the commission of the international wrong. The Permanent Court enunciated this basic principle in the *Chorzów Factory* case:

> "The essential principle contained in the actual notion of an illegal act — a principle which seems to be established by international practice and in particular by decisions of arbitral tribunals is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed[5]."

A State may discharge its duty to make reparation by implementing measures designed to re-establish the situation prior to the wrongful act or omission, that is, *restitutio in integrum*[6]. Where, however, it is not possible to restore the state of facts that would have existed if the unlawful act had not been committed, or such restoration does not fully redress the injury caused by the State's unlawful act, damages are awarded in lieu of restitution or as a supplement thereto[7]. As stated by the Permanent Court:

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[1] 1933-1934 *International Law Reports*, pp. 91 *et seq.*

[2] *Ibid.*, p. 101.

[3] G. Schwarzenberger, 1 *International Law*, p. 141 (3rd ed., 1957). Freeman agrees that "the degree of *public injury* — or rather the reparation sought for the violation of a *public* right — is determined by the extent of the *private* loss". Freeman, *op. cit.*, at p. 576.

[4] As used here throughout, "the damages suffered by Raytheon", refers not only to Raytheon's direct financial loss, but also to some US$551,300 in losses suffered by its wholly owned subsidiary, Raytheon Service Company, as detailed in Annexes 13 and 14.

[5] *Chorzów Factory, Merits, op. cit.*, at p. 47.

[6] *Texaco Overseas Petroleum Co./California Asiatic Oil Co.* v. *Government of the Libyan Arab Republic* (Award on the Merits) *("TOPCO* v. *Libya")*, 17 *International Legal Materials*, p. 1, at p. 36 (1977).

[7] *TOPCO* v. *Libya, op. cit.* at p. 36. *See also*, e.g., F. V. Garcia-Amador, 2 *The Changing Law of International Claims*, p. 580 (1984); *Claim of Thomas W. Mather, Surviving Partner of Mather & Glover, summarized in* M. Whiteman, 3 *Damages in International Law*, p. 2021 (1943).

> "Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it — such are the principles which should serve to determine the amount of compensation due for an act contrary to international law[1]."

This principle has been affirmed and applied repeatedly by public international tribunals[2] and private international arbitral bodies[3]. The award in the *Fabiani* case, for example, was premised on facts similar in this respect to the ones in this case[4]. In *Fabiani*, Venezuelan authorities refused to execute the terms of a private arbitral award against certain Venezuelan nationals in favor of the claimant. Fabiani was forced to declare bankruptcy because he did not have the benefit of money that would have been transferred to him had the Government enforced the earlier award. The award in the *Fabiani* case included the value of all property and uncollected notes that Fabiani would have realized had the foreign judgments been executed against his debtor; the expenses he incurred seeking to execute the arbitral award; and the personal injury caused by the denial of justice which brought about his bankruptcy. The bankruptcy, the cessation of Fabiani's commercial operations, and his financial embarrassment, all were considered the

> "direct consequence of the denials of justice, since Fabiani was thrown into bankruptcy at Maracaibo . . . for the failure of sums much lower than those which the execution of the arbitral decision would have granted him[5]".

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[1] *Chorzów Factory, Merits, op. cit.*, at p. 47. The application of this principle in cases of expropriation is discussed at pp. 93-96, *supra.*

[2] *See*, e.g., *Norwegian Shipowners' Claims*, 1 *Reports of International Arbitral Awards*, p. 308, at p. 338; *Martini Case*, 10 *Reports of International Arbitral Awards*, p. 644, at pp. 665-669; *Opinion in the "Lusitania" Cases*, 7 *Reports of International Arbitral Awards*, p. 32, at p. 39; *Cheek Case*, J. B. Moore, 5 *History of International Arbitrations*, p. 5068, at p. 5071 (1898); *Claim of Frances Irene Roberts, Administratrix of the Estate and Sole Heir at Law of William Quirk, Deceased, summarized in* Whiteman, *op. cit.*, at p. 1821; *Claim of Robert H. May* v. *Guatemala, Foreign Relations of the United States*, p. 648, at p. 674 (1900); *Claim of Peter Harmony, by his Attorney, Leonard S. Suarez, and Assignees, summarized in* Whiteman, *op. cit.*, at p. 2021; *Case of Patrick Cootey, summarized in* Moore, *op. cit.*, Vol. 3, at p. 2770; *Walter Fletcher Smith Claim*, 2 *Reports of International Arbitral Awards*, p. 915.

[3] For recent international arbitrations involving States and private parties, *see*, e.g., *AGIP Company* v *Popular Republic of the Congo ("AGIP")*, 67 *International Law Reports*, p. 319, at p. 339; *American Independent Oil Co. (AMINOIL)* v. *The Government of the State of Kuwait ("AMINOIL* v. *Kuwait")*, 21 *International Legal Materials*, p. 976, at p. 1031 (1982); *TOPCO* v. *Libya, op. cit.*; *BP Exploration Co. (Libya Ltd.)* v. *Government of the Libyan Arab Republic*, 53 *International Law Reports*, p. 297, at p. 347 (1974); *Libyan American Oil Co.* v. *Government of the Libyan Arab Republic*, 20 *International Legal Materials*, p. 1, at p. 71 (1977); *AMCO Asia Corp.* v. *The Republic of Indonesia*, 24 *International Legal Materials*, p. 1022, at p. 1037 (1985).

[4] *Case of Antoine Fabiani, summarized in* Whiteman, *op. cit.*, at pp. 1785-1789.

[5] *Case of Antoine Fabiani, summarized in* Whiteman, *op. cit.*, at pp. 1787-1788. In discussing the *Fabiani* case, Freeman noted that

> "the general result of the case appears, in the large, to be not inconsistent with the view expressed by the World Court [in the *Chorzów Factory* case] to the effect that the State's duty of reparation is one of a *restitutio naturalis*, that is to say, the re-establishment of the situation which in all likelihood would have existed if the delict had not been committed" (Freeman, *op. cit.*, at pp. 580-581).

Authoritative commentators, as well, have consistently recognized that an award of damages should compensate for all losses or injury caused by a State's wrongful acts. As García-Amador explains:

> "While restitution merely restores the property or right of which the alien in question has been deprived, an indemnity is intended to compensate him for all the other consequences of the act or omission contrary to international law . . . For all these reason [sic], 'damages' are, in fact, the only form of reparation which makes it possible in all situations to abide by the principle . . . that 'full' reparation must be made for an injury caused by an act or omission contrary to international law[1]."

All damages are compensable, provided only that they are proximately caused by the injurious acts. According to Reuter: "The injury for which reparation is due is that which is tied by a chain of causality to the wrongful act[2]." As Yntema explains:

> "(A) Whenever an international liability arises, there is a duty to make complete compensation and therefore for all the prejudicial consequences of the occurrence giving rise to the liability, whether the damage thus ensuing is direct or indirect. (B) The only limitations upon this duty spring from evidential or equitable considerations: (1) The damage must be shown to be a consequence of the occurrence. (2) It must be reasonably capable of estimation. (3) The compensation must be reasonably adjusted to the particular circumstances of the individual case[3]."

In the present case, full reparation cannot be achieved through *restitutio in integrum*. The positions of the parties have changed so dramatically that restoration of the state of facts that existed prior to the Government of Italy's wrongful intervention is simply not possible. Accordingly, the Government of Italy should pay compensation in the full amount of the losses sustained by Raytheon and Machlett as a result of its wrongful conduct, as detailed below.

2. *The Specific Types of Injury*

(a) *Financial Losses with Respect to Loan Guarantee Payments, Return of Investment, and Open Accounts*

As shown above, a principle objective of the requisition was to prevent Raytheon and Machlett from disposing of ELSI's assets through the planned liquidation. The Government of Italy wanted to acquire the assets itself and was not prepared to pay for them as of 1 April 1968. The requisition met the immediate political need of responding to the local outcry against the plant's closing, while giving the Government of Italy the opportunity to plan its acquisition strategy. Given ELSI's financial condition, the direct and foreseeable consequence of the requisition order was ELSI's bankruptcy. Even the President of the Sicilian Region acknowledged that ELSI was then left with no alternative but to file for bankruptcy.

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[1] García-Amador, *op. cit.*, at p. 584. *See also*, D. P. O'Connell, 2 *International Law*, p. 1204 (1965); Schwarzenberger, *op. cit.*, at pp. 654 and 655; Eagleton, *op. cit.*, at p. 182; Oliver, "Legal Remedies and Sanctions", in *International Law of State Reponsibility for Injuries to Aliens*, p. 61, at p. 710 (R. Lillich, ed., and contrib., 1983); Freeman, *op. cit.*, at p. 576; proposed draft Article 6 of the International Law Commission's draft articles on state responsibility, II *Yearbook of the International Law Commission, 1984* (Part Two), p. 100, n. 322.

[2] Translation. P. Reuter, *Droit international public*, p. 266 (1958). As Professor Reuter notes, the use of the terms "direct" and "indirect" is a "vague" and "insufficient" means of attempting to distinguish between consequences which are and are not so directly related to the wrongful act as to be compensable. *Ibid.*

[3] H. E. Yntema, "The Treaties with Germany and Compensation for War Damage", 24 *Columbia Law Review*, p. 153 (1924). *See also*, e.g., Jiménez de Aréchaga, "International Responsibility", in *Manual of Public International Law*, p. 531, at pp. 568-569 (M. Sørensøn, ed. 1968); C. Eagleton, "Measure of Damages in International Law", 39 *Yale Law Journal*, p. 52, at p. 75 (1929).

Having caused ELSI to declare bankruptcy when it would otherwise have proceeded to liquidate its assets and seek settlements with its creditors, the Italian Government is responsible for losses incurred by ELSI's owners as a result of the involuntary change in the manner of disposing of ELSI's assets.

The bankruptcy realized much less from the sale of ELSI's assets than would have been received from an orderly liquidation. As shown in the following table, the proceeds from an orderly liquidation of ELSI's assets at book value (as a fair measure of their going concern value) would have been sufficient to pay off all of ELSI's creditors, including amounts owed to Raytheon on open account, and still return 391 million lire (US$625,600) to Raytheon and Machlett as a small return of their investment. Even had the liquidation realized no more than the estimated minimum liquidation value, Raytheon would have received some payment on open accounts and a significant portion of ELSI's guaranteed loans would have been paid from the proceeds of ELSI's assets. Instead, under the bankruptcy, Raytheon lost the full value of the open accounts and, more importantly, was required to pay all of the guaranteed loans, thus incurring some 6,931.4 million lire (US$11,113,600) in additional losses. The resulting damage to Raytheon and Machlett, therefore, as compared with liquidation at going concern value, is 7,322.4 million lire (US$11,739,200).

Raytheon and Machlett incurred these losses as a result of the Government of Italy's wrongful intervention. The losses resulted directly from the Government of Italy's actions in violation of the Treaty, and therefore should be included in calculating the compensation due the United States for such violations[1].

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[1] In accordance with the basic principle that compensation should seek to restore the situation which would have existed without the wrongful act, compensation should be awarded in United States dollars. *See*, e.g., *Morrison-Knudsen Pacific Ltd.* v. *Ministry of Roads and Transportation*, 143-127-3 (24 July 1984) at p. 35; *Craig* v. *Ministry of Energy of Iran*, Awd. No. 71-346-3 (2 September 1983) at pp. 17-18. Raytheon and Machlett are United States companies, whose principal business currency is dollars. Raytheon's loan guarantee payments were met by purchasing lire with dollars, as were its legal expenses in defending the creditor claims and other costs. The losses were thus incurred in dollars. Moreover, in view of the changing currency values since the time of loss, only if compensation is calculated in dollars can it accurately reflect the actual losses without distortion caused by subsequent monetary fluctuations.

By the same token, compensation for the portion of open accounts owed to Raytheon which it was precluded from recovering should be measured in dollars, converted at the official rate of exchange in effect at the time. Had any of these payments been received, they would have been promptly converted to dollars and repatriated. The loss was suffered and should now be measured in dollars.

Table. Liquidation vs. Bankruptcy Proceeds*
(Lire in Millions)

	Liquidation at Book Value	*Liquidation at Est. Min. Value*	*Actual Bankruptcy Proceeds*
Proceeds for distribution	17,053.5	10,838.8	6,373.8
Payment of creditors:			
Preferred	1,036.8	1,036.8	1,964.7
Secured	3,819.5	3,819.5	3,702.1
Unsecured — Raytheon	1,143.8	510.8	-0-
Unsecured — other	10,292.4	5,101.7	33.4
Total	16,292.5	10,468.8	5,700.2
Administration and liquidation costs	370.0	370.0	673.6
Total payments	16,662.5	10,838.8	6,373.8
Net proceeds	391.0	-0-	-0-
Net proceeds (Cost) to Raytheon and Machlett			
Net proceeds	391.0	-0-	-0-
Guaranteed loans interest	-0-	(3,160.6)	(5,787.6)
Open accounts	-0-	(633.0)	(1,143.8)
Total (million lire)	391.0	(3,793.6)	(6,931.4)
Total (U.S. dollars)	$625,600**	($6,082,600)†	($11,113,600)††

* Data taken from Ann. 13, Schedules E, F, and I1 and Ann. 30, Attachment B, except conversion from lire to dollars, as noted below.

** Conversion given at Ann. 13, Schedule G4.

† Conversion given at Ann. 13, Schedule I2 (guaranteed loans and interest) and Schedule J (open accounts).

†† Conversion given at Ann. 13, Schedule I1 (guaranteed loans and interest) and Schedule J (open accounts).

It should be noted that the Treaty explicitly recognizes as a protected "investment" not only direct contributions to capital but also related financial contributions such as guarantees and advances of funds. As Article I of the Supplement specifies, corporations of either party

> "shall not be subjected to arbitrary or discriminatory measures . . . resulting particularly in . . . impairing their other legally acquired rights and interests in such enterprises or in the investments which they have made, whether in the form of funds (loans, shares or otherwise), materials, equipment, services, processes, patents, techniques, or otherwise".

Thus, the guarantees and the open accounts, as well as the direct return of capital which Raytheon and Machlett lost, are protected interests — being an "investment" which was made "in the form of loans, funds, or otherwise" — and must be considered in awarding compensation for violation of the Treaty[1].

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[1] Similar losses have been recognized in arbitral awards in the absence of a treaty. For example, in the *Cerruti* case, which arose when Colombia seized the assets of an Italian national and those of a company in which he was a partner, the arbitrator required

(b) *Legal Expenses in Connection with Bankruptcy and Defense Against Italian Bank Suits*

A further direct consequence of the Government of Italy's actions in violation of the Treaty was that Raytheon incurred substantial outside legal expenses in connection with the bankruptcy and in defending against suits brought in Italian courts by certain government-owned and government-controlled creditor banks. As discussed above, in the aftermath of the requisition and bankruptcy of ELSI, five Italian government banks brought suit against Raytheon for payment of certain of ELSI's debts which Raytheon had *not* guaranteed. The Italian courts subsequently dismissed all of the lawsuits as groundless, but only after several years of litigation. These lawsuits would not have been filed had ELSI been able to liquidate in an orderly manner, since the banks would have been paid in full or, at worst, would have settled their debts with ELSI. The evidence indicates, moreover, that these suits were not only a foreseeable consequence of the Government's actions, but part of its plan to shift the costs of its actions to Raytheon. The President of the Sicilian Region had advised Raytheon even before the requisition that such suits would be brought[1].

As detailed in Annex 40 and Annex 13, Schedule K, Raytheon incurred US$115,638.35 of outside legal expenses in connection with the bankruptcy and US$766,936.77 in defending against these lawsuits. As part of the foreseeable consequential damages stemming from Italy's wrongful intervention in ELSI, these amounts should be included in the compensation to be awarded[2].

(c) *Costs Incurred by Raytheon In Pursuing Its Claim*

As also detailed in Annex 40 and Annex 13, Schedule K, Raytheon incurred outside legal and related expenses of some US$57,226.38 in pursuing its claim against the Government of Italy for its actions against ELSI. Therefore, compensation in this case should include this amount, for such costs are a loss which would not have occurred but for Italy's wrongful conduct.

International arbitral tribunals frequently have allowed recovery for the costs incurred in seeking international reparation. In the *Salvador Commercial Company* case, for example, the award included amounts which the claimant had expended

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Colombia to assume the outstanding debts of the partnership for which Cerruti could be held personally liable. *Case of Cerruti, summarized in* Moore, *op. cit.*, Vol. 2, at pp. 2117 et seq. The arbitrator in effect acted to prevent the passing-on to the investor of company debts, such as the guarantees in the present case.

In the *Shufeldt* case, which concerned the breach of a concession agreement with Guatemala, Guatemala was found liable for, *inter alia*, reimbursement to the concessionaire of amounts advanced to his laborers which were uncollected at the time of breach. *Shufeldt claim*, 2 *Reports of International Arbitral Awards*, pp. 1083 et seq.

[1] *Supra*, pp. 55-56.

[2] In the *Case of Cerruti, op. cit.*, in order to preserve the full amount of compensation for the property taken, the Government of Colombia was required to pay litigation costs incurred by Cerruti in defending against private creditors seeking to recover from him personally debts of the company whose assets had been seized. The arbitrator noted that Colombia had "by its acts destroyed [Cerruti's] means for liquidating [company] debts . . . for which he may be held personally liable". *Ibid.*, at p. 2121. Similarly in this case, to ensure full recovery by Raytheon of amounts owed for the unlawful taking of its property, it too should be reimbursed for litigation costs which resulted from the taking. The creditors that brought suit, moreover, were Italian government banks, acting pursuant to a government plan to increase Raytheon's losses from its ELSI operation to the maximum extent possible. These losses were much more directly the consequence of wrongful Government action than those which Colombia was required to assume in *Cerruti*.

both prior to the intervention of the United States on his behalf and after United States' espousal of the claim[1]. Similarly, in the *Shufeldt* case, the arbitrator awarded the claimant the expenses it had incurred in trying to come to a settlement with the Guatemalan Government[2]. In the *Poggioli* case, the award included compensation for the claimant's travel expenses in submitting the claim to the legation and the Venezuelan Government[3].

Thus the full amount of damages suffered by Raytheon and Machlett is US$625,600 for loss of investment, US$11,739,200 for losses resulting from open accounts and payment of guaranteed loans, and US$939,800 for legal expenses incurred by Raytheon in relation to bankruptcy proceedings, in defending against related litigation, and in pursuing its claims, for a total of US$12,679,000, plus interest, computed as described below.

Section 3. The Award of Interest

A. Interest Should Be Awarded to Compensate for the Loss of Use of Money over Time

The principle that compensation should redress the injuries caused by the respondent's wrongful actions entails, as a corollary, that interest be awarded to compensate for the loss of use of money over time.

International law commentators agree that just compensation to an injured party requires the payment of interest on its loss, as "a necessary part of a just national indemnification"[4]. Lillich states: "[i]nterest as part of an award by an international tribunal . . . is recognized by customary international law . . . as an element of damages inherent in just compensation[5]". Similarly, Eagleton notes that: "[t]he award of interest is usually considered to be merely a part of the duty to make full reparation[6]".

International tribunals and commissions have long viewed interest as a vital element of compensation. In *The Russian Indemnity* case, for example, the Permanent Court of Arbitration stated that:

> "all interest-damages are always reparation, compensation for culpability . . . Legal interest allowed a creditor for a sum of money . . . is the legal compensation for the delinquency of a tardy debtor exactly as interest-damages or interest allowed in the case of . . . the non-fulfillment of an obligation, are compensation . . .[7]."

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[1] *Claim of "Salvador Commercial Company" et al.*, 15 *Reports of International Arbitral Awards*, p. 467, at p. 469.

[2] 2 *Reports of International Arbitral Awards*, p. 1101.

[3] 10 *Reports of International Arbitral Awards*, p. 669, at p. 691.

[4] J. B. Moore, 6 *Digest of International Law*, p. 1029 (1906), quoting J. D. Davis, Treaty Notes, in *United States Treaty Volume* (1776-1887).

[5] R. Lillich, "Interest in the Law of International Claims", *Essays in Honor of Voitto Saario and Toivo Sainio*, p. 51, at p. 59 (1983).

[6] C. Eagleton, *The Responsibility of States in International Law*, p. 203 (1928). *See generally*, J. H. Ralston, *The Law and Procedure of International Tribunals*, pp. 127-136 (1925); M. Whiteman, *op. cit.*, pp. 1913 et seq. (1943); Lillich, *op. cit.*, at pp. 51-59; G. Wetter, "Interest as an Element of Damages in the Arbitral Process", 5 *International Financial Law Review*, pp. 20 et seq. (December 1986); Article 38 (1) of the Revised Harvard Draft Convention, F. V. Garcia-Amador, L. Sohn and R. Baxter, *Recent Codification of the Law of State Responsibility for Injuries to Aliens*, p. 341 (1974).

[7] *The Russian Indemnity Case* (1912), 1 *Hague Court Reporter*, p. 297, at p. 313, Perm. Ct. Arb. (1916), *reprinted in* 7 *American Journal of International Law*, p. 178, at p. 191 (1913). In this case, however, the Court found that Russia had waived its claim to interest. 1 *Hague Court Reporter*, p. 323.

The Permanent Court of International Justice awarded interest in 1923 in the *Wimbledon* case[1] and further expressed agreement with the proposition that compensation for a taking must include interest in the *Chorzów Factory* case[2]. Similarly, in the *Illinois Central Railroad Company*, the Mexican-United States Claims Commission held that interest "must be regarded as a proper element of compensation"[3].

More contemporary cases consistently reaffirm this principle. In 1962, for example, the Foreign Claims Settlement Commission of the United States, citing the opinions of mixed claims commissions and views of authoritative commentators, concluded that an award of interest "is not only in conformity with principles of international law . . . but is also required by equity and justice . . ."[4]. The Iran-United States Claims Tribunal also has ruled consistently that principles of international law entitle a successful claimant to interest. As stated in the leading Tribunal award in *McCollough & Company, Inc.* v. *The Ministry of Post, Telegraph and Telephone et al.*:

> "The first principle [which can be deduced from international practice] is that under normal circumstances, and especially in commercial cases, interest is allocated on the amounts awarded as damages in order to compensate for the delay with which the payment to the successful party is made[5]."

The United States accordingly submits that interest should be awarded in this case in full compensation for Raytheon's loss of use of money over time as a result of Italy's actions in violation of the Treaty.

B. INTEREST SHOULD BE AWARDED AT THE UNITED STATES PRIME RATE

As shown in the preceding section, the purpose behind an award of interest is to compensate a claimant for the loss of use of its money from the date of the injury and to thereby make the claimant whole. The rate chosen therefore should be that which, as nearly as possible, equals the amount of the claimant's actual losses. "The rate of interest is determined according to the circumstances, the object being to determine a just compensation for the wrong[6]." Or, as D. P. O'Connell suggested, the proper inquiry should be: "[W]hat could the claimant reasonably have expected had he had the use of the property[7]?"

This approach has led international tribunals to the choice of different specific rates of interest in different cases. Among the various rates of interest employed have been: the interest rate prevailing in the country of the claimant's residence[1], a fair rate in light of prevailing world financial conditions[2], and that prevailing at the place where the claim arose[3]. In choosing the appropriate financial market and interest rate, international commissions have been guided by the essential purpose of an award of interest — to fairly compensate the injured party for the loss of use of its money[4].

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[1] *S.S. "Wimbledon", Judgments, 1923, P.C.I.J., Series A, No. 1*, p. 15, at p. 33. In this case, the Permanent Court awarded interest from the date of award on the ground that this was "the moment when the amount of the sum due has been fixed and the obligation to pay established". *Ibid.*

[2] In *Chorzów Factory, Merits*, the Permanent Court viewed the reparation of the value of the property taken plus interest as the minimum to which a claimant deprived of its property is entitled. *Op. cit.*, at p. 47. As discussed below, in this case the Court found that just compensation would include other damages as well, since the expropriation was contrary to international law.

[3] *Illinois Central Railroad Co. (USA)* v. *United Mexican States*, 4 *Reports of International Arbitral Awards*, p. 134, at p. 137.

[4] *In the Matter of the Claim of John Hedio Proach*, Decision No. PO-652, Foreign Claims Settlement Commission of the United States, *Decisions and Annotations*, p. 549, at p. 552 (1968). *See also*, e.g., cases cited at n. 1, p. 114, *infra*.

[5] Award No. 225-89-3 (22 April 1986), pp. 37-38. *See also*, e.g., cases cited at n. 2, p. 114, and n. 4, p. 114, *infra*.

[6] Eagleton, *op. cit.*, at p. 205.

[7] O'Connell, *op. cit.*, at p. 1213.

The principle of full compensation generally dictates, in commercial cases, the choice of a commercially reasonable rate of interest which fairly compensates for the loss of use of funds. As stated by Lillich: "Since the purpose of interest is to provide just compensation to claimants, the rate of interest must reflect the economic realities of the times[5]." This conclusion is not new. In the *Wimbledon* case, for example, the Permanent Court took into account "the present financial situation of the world", especially including "the conditions prevailing for public loans" in choosing a rate of interest[6].

In more recent times, with domestic interest rates on occasion reaching all-time highs, the practice of international tribunals reflects more particular emphasis on and consistent application of this principle. As noted by the Iran-United States Claims Tribunal: "The international awards which do not allocate interest or which fix very low rates are rather dated or concern non-commercial disputes between governments[7]."

Contemporary international practice does not offer detailed guidance on which particular "commercially reasonable rate" should be chosen to reflect fairly the financial injury caused by the loss of use of money over time[8]. Where an actual rate of loss is claimed, for example, that the claimant was forced to borrow money at a specific rate, that rate may be used[1]. Where an "actual" rate is not sought or awarded, however, one of two approaches is generally taken. Either a prevailing standard financial rate may be chosen, selected in the light of the financial context and circumstances of the injured party, or a rate which is judged to be generally reasonable, or "fair", for commercial transactions may be chosen[2]. In *Sylvania*, the Iran-United States Claims Tribunal decided that injury to United States corporations, as a general rule, was most fairly measured by a United States market rate[3].

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[1] *See*, e.g., *S.S. Wimbledon*, *op. cit.*, at p. 32.

[2] *See*, e.g., *The "Macedonian" (United States of America* v. *Chile)*, J. B. Moore, 2 *History and Digest of International Arbitrations*, p. 1466 (1898).

[3] *See*, e.g., *Puerto Cabello and Valencia Railway Company Case*, 9 *Reports of International Arbitral Awards*, p. 510, at pp. 526-527; Borchard, *op. cit.*, at pp. 429-430. In elder expropriation cases, and in contract disputes which are decided according to *lex loci contractus*, a local statutory rate of interest frequently has been chosen. *See*, e.g., Lillich, *op. cit.*, at p. 58.

[4] *See*, e.g., J. H. Ralson, *International Arbitral Law and Procedure*, pp. 127-136 and cases cited therein.

[5] Lillich, *op. cit.*, at p. 56.

[6] *S.S. Wimbledon*, *op. cit.*, at p. 32.

[7] *McCollough & Company, Inc.* v. *The Ministry of Post, Telegraph and Telephone et al.*, Awd. No. 225-89-3, p. 35 (22 April 1986).

[8] *See*, e.g., the survey of recent international private arbitral awards in *McCollough*, *op. cit.*, at pp. 35-37. The Chamber in *McCollough* concludes that the circumstances which may be taken into consideration are "unlimited". *Ibid.*, at p. 38. This case, however, takes an unusually broad view of "relevant factors", including arbitrator "discretion"; it may be questioned whether including such factors does not amount to a decision *ex aequo et bono* rather than in accordance with principles of law. It should be noted as well that *McCollough* considers cases which are determined under contractual provisions or *lex loci contractus* rather than international law. The recent cases cited in *McCollough* in which the choice of a rate of interest is not decided under national law, with the exception of the *Revere* case, award interest at commercially reasonable rates ranging from 9 to 18 per cent. In *Benvenuti*, commercial rates are chosen even though the decision nominally is governed by local law. In the *Revere* case, the tribunal found that the applicable arbitration rules precluded an award of interest, except for non-payment of the arbitration award. *See*, *AMINOIL* v. *Kuwait*, *op. cit.*, at p. 1042; *Benvenuti et Bonfant srl* v. *The Government of the People's Republic of the Congo ("Benvenuti* v. *Congo")*, 21 *International Legal Materials*, p. 740, at p. 762 (1982); *Norwegian Agent* v. *Belgian Shipowner*, 8 *Yearbook of Commercial Arbitration*, p. 94 (1983); *Revere Copper and Brass, Inc.* v. *Overseas Private Investment Corporation*, 17 *International Legal Materials*, p. 1321, at p. 1367 (1978); *Saudi Arabian Hotel Company* v. *Insurance Company of a European Country*, 10 *Yearbook of Commercial Arbitration*, p. 41

In this case, the United States submits that the United States average annual prime rate should be used[4]. The injury here consists of United States dollar losses incurred by Raytheon, a United States company. Had it not been for the wrongful intervention of the Government of Italy which is the subject of this claim, Raytheon would have retained in the United States some US$9.3 million which it spent to pay ELSI's guaranteed loans and some US$940,000 which it spent for legal expenses. In addition, it would have been able to repatriate some US$2.5 million for amounts due on open accounts and surplus proceeds of liquidation. The relevant financial market for measuring the loss is thus that faced by Raytheon in the United States. The prime rate, which is "the interest rate charged for the very best credits of short term maturity"[5], "is the rate used [by United States banks] as a base to determine rates on loans to [their] most creditworthy customers" at any given point in time[6]. The prime rate thus reflects the minimum cost of money to Raytheon in the United States market[7]. The average prime rate over the relevant period was approximately 10 per cent. It is a "fair rate" which

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(1985); *Stellar Chartering & Brokerage, Inc. Time-Chartered Owners of the M/V Continental Trader (USA) v. Rijn, Maas en Zee Scheepvaartkantoor, Charterers (Netherlands)* ("*Stellar v. Rijn, Maas en Zee*"), 7 *Yearbook of Commercial Arbitration*, p. 147, at p. 149 (1982).

[1] See, e.g., *Dames & Moore v. The Islamic Republic of Iran*, Awd. No. 97-54-3, 4 *Iran-United States Claims Tribunal Reports*, p. 212 (1983-III); Wetter, *op. cit.*.

[2] The Iran-United States Claims Tribunal, faced with a large number of similar cases, generally ordered simply a "fair rate" of 10-12 per cent. This may be a "fair rate" for the specific case or a uniform "fair rate". *See also*, e.g., *Saudi Arabian Hotel Company v. Insurance Company of a European Country*, *op. cit.*; *Norwegian Agent v. Belgian Shipowner*, *op. cit.*; *Benvenuti v. Congo*, *op. cit.* These rates were presumably chosen by the panels in light of specific relevant rates.

[3] *Sylvania Technical Systems, Inc. v. The Government of the Islamic Republic of Iran* ("*Sylvania*"), Awd. No. 180-64-1 (27 June 1985). *See also*, e.g., Lillich, *op. cit.*, at p. 59, *AGIP*, *op. cit.*; *Stellar v. Rijn, Maas en Zee*, *op. cit.*. In *Sylvania*, the Chamber chose an investment rate — average rates of interest paid on six-month certificates of deposit — rather than a borrowing rate because it decided to formulate a uniform rule which could fairly reflect injury in all cases. *Ibid.*, at pp. 31-34. *See* discussion in Wetter, *op. cit.*, at p. 21.

[4] The actual prime rate changes from time to time during any given year, making calculations over a number of years extremely cumbersome. The yearly average prime rate is therefore suggested as a more convenient and fairly equivalent measure for interest over longer periods of time. This is given in Annex 96, which was obtained from the United States Federal Reserve System Board of Governors.

[5] G. Munn, *Encyclopedia of Banking and Finance*, p. 778 (8th ed. by F. L. Garcia, 1983).

[6] *Sylvania*, *op. cit.*, at p. 32, n. 6.

[7] As noted in n. 3, *supra*, in some cases international tribunals have used an investment rather than a borrowing rate. However, unless a specific investment loss is claimed, it is more difficult to choose an appropriate investment rate. The rates of return on investments vary widely, from the low rates paid on bank savings accounts to the very high rates possible from successful aggressive investments. Since Raytheon, like most major corporations, relies significantly on borrowing for its financing, a standardized borrowing rate is both an appropriate and a more reliable measure in this case.

is consistent with both general approaches to the choice of an interest rate, where a specific "actual" rate is not claimed.

C. INTEREST SHOULD BE CALCULATED FROM THE DATE OF INJURY TO THE DATE OF PAYMENT OF THE AWARD, AND COMPOUNDED ANNUALLY

It is generally accepted that interest should be calculated from the date of injury until the date of payment of the award[1]. This follows from the principle that interest is paid in order to compensate the injured party for the loss of use of its money. The date of injury is determined in light of what would have occurred, absent the wrongful actions causing the injury. Thus, with respect to Raytheon's losses for guarantee payments and other actual payments, the date of injury is the date of payment. With respect to losses on open accounts, it is the date on which Raytheon would have received payment on these open accounts if it had been allowed to proceed with the liquidation plan. For the sake of simplicity, however, the date of injury which has been used for purposes of calculating interest is the end of the calendar year in which the injury occurred[2].

By application of the same principle — that interest should compensate for the loss of use of money — interest should be compounded on an annual basis. While compound interest has not been uniformly sought or awarded, in a commercial dispute such as this one it is unquestionably part of a commercially reasonable rate. As stated in the *Fabiani* case:

> "one has to recognize that Fabiani could have invested in his enterprises, in an interest bearing way, the simple interest on the amounts of money that had been allocated in the arbitral award, . . . The compounding of interest is authorized in the field of current accounts and of similar operations since the legislator presumes that in commerce money does not remain unproductive[3]."

In the *AMINOIL* case, interest was also awarded on a compound basis[4].

Commentators reaffirm that compound interest should be awarded where appropriate to compensate for actual loss. As F. A. Mann has recently stated:

> "Is it open to the court to hold the plaintiff entitled to compound interest in respect of damages awarded to him? In theory the answer should once again be in the affirmative[5]."

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[1] *See*, e.g., *AGIP*, *op. cit.*, at p. 343; *Delagoa Bay and East African Railway Company* in La Fontaine, *Pasicrisie Internationale*, p. 544 (1902); *Katherine A. MacMurdo Case*, *ibid.*, at p. 397. An excellent collection of earlier state practice is found in Whiteman, *op. cit.*, at pp. 1963-1975. *See also*, e.g., Eagleton, *op. cit.*, at p. 205; Lillich, *op. cit.*, at pp. 55-57. Some earlier decisions by international tribunals included interest only until the date of the award on the theory that it had no authority to allow interest for a period of time beyond that of its existence. *See* Ralston, *op. cit.*, at p. 87, sec. 170. As the International Court of Justice is a permanent body, however, an award of interest until the date the award is paid would not be an act beyond the power of the Court. *See*, e.g., *S.S. Wimbledon*, *op. cit.* The Iran-United States Claims Tribunal has also routinely awarded interest up to the date of payment. *See*, e.g., *Sylvania*, *op. cit.*, at p. 34; *Woodward-Clyde Consultants* v. *The Government of the Republic of Iran, et al.*, Awd. No. 73-67-3, 3 *Iran-United States Claims Tribunal Reports*, p. 239, at p. 251 (1983-II).

[2] Ann. 13, Schedules G2 and H2.

[3] Translation. *Antoine Fabiani*, *op. cit.*, at p. 183.

[4] *AMINOIL* v. *Kuwait*, *op. cit.*

[5] F. A. Mann, "On Interest, Compound Interest and Damages", 101 *The Law Quarterly Review*, p. 30, at p. 44 (1985).

Wetter adds:

> "It is submitted that the issue as to whether or not compound interest is permissible as an element of damages must be resolved with reference to the ultimate legal rationale for awarding interest[1]."

The United States accordingly submits that the award of compound interest is appropriate in this case. Raytheon itself is a business enterprise that was generating earnings. Moreover, Raytheon, like most major corporations, relies significantly on debt financing. If Raytheon had not suffered financial losses as a result of Italy's wrongful actions, these funds would either have generated additional earnings or would have been used to repay debt. These funds therefore would have generated either interest earnings or interest savings, which in turn would have been devoted to a profitable use. The calculation of interest must therefore be compounded in order to reflect the extent of actual injury from their loss.

In conclusion, in order to provide compensation which reflects the extent of injury caused, the United States submits that the Court should award interest at the average annual United States prime rate, compounded annually, from the date of the injury to the date compensation is paid.

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[1] Wetter, *op. cit.*, at p. 72.

SUBMISSIONS

Accordingly, the United States submits to the Court that it is entitled to a declaration and judgment that:

(a) Italy — by engaging in the acts and omissions described above, which prevented Raytheon and Machlett, United States corporations, from liquidating the assets of their wholly owned Italian corporation ELSI and caused the latter's bankruptcy, and by its subsequent actions and omissions — violated the international legal obligations which it undertook by the Treaty of Friendship, Commerce and Navigation between the two countries, and the Supplement thereto, and in particular, violated:

- Article III (2), in that Italy's actions and omissions prevented Raytheon and Machlett from exercising their right to manage and control an Italian corporation,
- Article (V) (1) and (3), in that Italy's actions and omissions constituted a failure to provide the full protection and security as required by the Treaty and by international law;
- Article V (2), in that Italy's actions and omissions constituted a taking of Raytheon's and Machlett's interests in property without just compensation and due process of law;
- Article VII, in that these actions and omissions denied Raytheon and Machlett the right to dispose of their interests in immovable property on terms no less favorable than an Italian corporation would enjoy on a reciprocal basis;
- Article I of the Supplement, in that the treatment afforded Raytheon and Machlett was both arbitrary and discriminatory, prevented their effective control and management of ELSI, and also impaired their other legally acquired rights and interests;

(b) that, owing to these violations of the Treaty and Supplement, singly and in combination, the United States is entitled to compensation in an amount equal to the full amount of the damage suffered by Raytheon and Machlett as a consequence, including their losses on investment, guaranteed loans, and open accounts, the legal expenses incurred by Raytheon in connection with the bankruptcy, in defending against related litigation and in pursuing its claim, and interest on such amounts computed at the United States prime rate from the date of loss to the date of payment of the award, compounded on an annual basis; and

(c) that Italy accordingly should pay to the United States the amount of US$12,679,000, plus interest, computed as described above.

15 May 1987.

(Signed) Abraham D. SOFAER,
Agent of the United States
of America.

(Signed) Arnold I. BURNS,
Deputy Attorney General
Department of Justice.

ANNEXES TO THE MEMORIAL OF THE UNITED STATES OF AMERICA

Annex 1

TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC, SIGNED AT ROME, 2 FEBRUARY 1948, ENTERED INTO FORCE 26 JULY 1949, *TIAS* 1965; 79 *UNTS* 171

[See pp. 9-31, supra*]*

Annex 2

AGREEMENT SUPPLEMENTING THE TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION OF 2 FEBRUARY 1948, SIGNED AT WASHINGTON, 26 SEPTEMBER 1951, ENTERED INTO FORCE, 2 MARCH 1961, *TIAS* 4685; 404 *UNTS* 326

[See pp. 32-37, supra*]*

Annex 3

CHAMBER OF DEPUTIES, PARLIAMENTARY PROCEEDINGS, DOCUMENTS — BILLS AND REPORTS, N. 246-A, PAGE 4, PRESENTED TO THE OFFICE OF THE PRESIDENT ON 2 MARCH 1949

[See Counter-Memorial of Italy, Annex 4]

Annex 4

SENATE OF THE REPUBLIC, LEGISLATURE III, 291ST SESSION, ASSEMBLY, PAGE 13758, 19 JULY 1960

[See Counter-Memorial of Italy, Annex 14]

Annex 5

MAP OF ITALY HIGHLIGHTING THE MEZZOGIORNO REGION

[Not reproduced]

Annex 6

THE FOREIGN INVESTOR'S DIGEST OF ITALIAN CORPORATE LAW, PAGES 245-254 (1963)

[Not reproduced]

Annex 7

RAYTHEON COMPANY CERTIFICATE OF GOOD STANDING, STATE OF DELAWARE, DATED 22 DECEMBER 1986

[Not reproduced]

Annex 8

INTRODUCTORY PAGES FROM 1985 RAYTHEON COMPANY ANNUAL REPORT

[Not reproduced]

Annex 9

AFFIDAVIT OF CHARLES F. ADAMS. FINANCE COMMITTEE CHAIRMAN AND DIRECTOR, RAYTHEON COMPANY, DATED 17 APRIL 1987

I, Charles Francis Adams, appeared before a notary public in and for the Commonwealth of Massachusetts and, upon being duly sworn, stated that:

1. In 1932, I graduated from Harvard College. Two years later, I joined the investment banking firm of Jackson and Curtis, where I became a partner in 1936. This firm became Paine, Webber, Jackson and Curtis in 1941.

2. During my tenure at Paine, Webber, I also served as a director of Raytheon Company ("Raytheon") and Submarine Signal Company, which later merged with Raytheon.

3. When the United States entered World War II, I joined the United States Navy and commanded destroyer escorts in the Atlantic and Pacific theatres.

4. Upon returning to the United States in 1945 with the rank of Commander, I served as a member of the staff of Admiral Jonas H. Ingram, Commander in Chief of the Atlantic Fleet.

5. After the war ended, I served briefly in the Bureau of Personnel at the Navy Department.

6. In 1947, I became Executive Vice-President of Raytheon. One year later, in 1948, I became President of Raytheon.

7. In 1964, Raytheon's Board of Directors elected me as Chairman of the Board.

8. In May of 1975, I retired as Chairman of Raytheon's Board of Directors. However, I continue to serve as a Director of Raytheon and Chairman of Raytheon's Finance Committee.

9. Raytheon is a United States corporation which manufactures four principal types of products: (1) electronic equipment, for example, missile systems, radars, microwave components, and military communication devices; (2) aircraft products, for example, single and twin engine piston, turboprop and jet airplanes; (3) major appliances, for example, microwave ovens, refrigerators, and home laundry equipment; and (4) educational materials, for example, textbooks and instructional recordings. In addition, Raytheon furnishes various services to its customers, for example, the design and construction of electric generating stations and petrochemical plants.

10. During 1955, Raytheon obtained a 14 per cent equity interest in Elettronica Sicula S.p.A. ("ELSI"), a newly formed company in Palermo, Sicily, Italy. The Moro Group of Genoa, Italy, and the Fondo Regionale per la Partecipazioni Azionarie della Regione Siciliana ("Share Participation Fund of the Sicilian Region") owned the balance of ELSI's stock.

11. Approximately one year later, in 1956, a successful, Milan-based, investment company, La Centrale Finanziaria Generale S.p.A. ("La Centrale"), acquired the ELSI stock owned by the Moro Group and the Share Participation Fund of the Sicilian Region.

12. Over the next 11 years, when La Centrale from time to time declined to contribute additional capital needed to meet ELSI's requirements, Raytheon invested almost 12 million dollars in ELSI, thereby increasing its percentage of ownership.

13. By 1967, Raytheon had contributed sufficient capital to own approximately 99 per cent of ELSI.

14. During 1967, Machlett Laboratories, Inc. ("Machlett"), a wholly owned subsidary of Raytheon, acquired the remaining stock in ELSI from La Centrale.

15. Raytheon had increased its investment in ELSI for several reasons. First, the increased investment appeared at the time to make good business sense. With technical assistance and support from Raytheon, ELSI had become a highly respected manufacturer of sophisticated electronic equipment. Second, we believed our investment in ELSI would be secure. Italy had entered into the Treaty of Friendship, Commerce, and Navigation with the United States, which guaranteed treatment to American firms equal to that accorded Italian firms and in other ways afforded protection for our investment. Italy was also rapidly becoming a leading industrialized country, where United States investors generally enjoyed good relations. Finally, while the markets for most of ELSI's products were not in Sicily, but the Italian and European mainland and ELSI's products were generally expensive to transport because of their weight and size, we believed the highly publicized investment incentives offered by the Italian Government would defray these cost and marketing disadvantages. Because the Italian Government had promised various incentives to companies if they invested in the Mezzogiorno Region, including transport subsidies, we believed that our strong commitment to our Mezzogiorno work force and to making ELSI a success were in concert with Italian governmental objectives.

16. If the Italian Government had not offered such incentives, we would not have continued to invest in ELSI.

17. Besides furnishing the financial support and technical assistance necessary to develop a large factory and train hundreds of Italian workers in basic electronic skills, Raytheon arranged, by exclusively licensing ELSI in Raytheon's intellectual property, for ELSI to obtain several major contracts, including contracts to provide electronic components to the North Atlantic Treaty Organization ("Nato") for the Raytheon Hawk missile and TPS1D mobile air search radar programs. I personally negotiated the Nato Hawk contract with European Nato countries and industries. The Nato Hawk program became a highly successful project for ELSI and other Italian firms both financially and technically.

18. During the early 1960s, officials at Finmeccanica, the Italian prime contractor on the Nato Hawk program and one of the companies owned by the Italian conglomerate Istituto per la Ricostruzione Industriale ("IRI"), nominated me for the Commendatore al Merito della Republica Italiano because of "the highly effective and outstanding contribution given by (me), as President of Raytheon, to the development of the electronic industry in Italy". Subsequently, the Under Secretary of the Italian Ministry for State Participations awarded me this decoration at a special ceremony in Rome.

19. However, despite my efforts and the efforts of other Raytheon officials as well as those of Aldo Profumo, who was ELSI's Italian resident manager in Palermo, and Professor Calosi, who was Chairman of ELSI's Board of Directors until 1967, to make ELSI a successful, profitable enterprise, ELSI continued to accumulate losses.

20. While Raytheon absorbed ELSI's losses for several years, it could not go on doing so indefinitely. Accordingly, in fiscal year 1967, Raytheon embarked upon a major effort to turn ELSI around, which included the provision of additional capital and a search for new product markets. Our decision to proceed with this plan, which would attempt to make ELSI self sufficient, however, was contingent upon the fact that if ELSI could not be made self sufficient through

such an all out effort, Raytheon would not continue to absorb ELSI's losses as it had in the past.

21. As part of this effort, Raytheon selected key personnel from its various divisions, including Raytheon Europe International Company ("Raytheon-Europe") and Machlett, to become members of a special team, which would infuse new technical and managerial techniques into the operation of ELSI. In addition, Raytheon and Machlett elected John Clare, President of Raytheon-Europe, as Chairman of the Board of Directors of ELSI.

22. After thoroughly studying ELSI, Mr. Clare, an accomplished engineer and businessman with over 20 years' experience in the manufacture and sale of electronic products in Europe, issued a 61-page report which indicated that, while ELSI's accumulated losses were increasing, ELSI could become a profitable enterprise if it obtained an Italian partner, introduced new product lines, and received an infusion of capital.

23. I carefully reviewed the 61-page report, which was prepared by Mr. Clare and other senior officials at ELSI, and agreed with the report's conclusions.

24. If ELSI was going to be successful, it had no choice but to obtain a major Italian partner. After La Centrale decreased its ownership of ELSI in the early 1960s, ELSI was viewed as an "American" Company. We had learned by 1967 that, in order for a company to be successful in Italy, it had to be viewed as "Italian" and have an "Italian link" or "contact", which would provide access to important Italian markets and the contacts necessary to obtain vital support from the Italian Government. The only way for ELSI to be viewed as an Italian company and have that necessary link was to acquire a major Italian partner, such as IRI and Ente Siciliano per la Produzione Industriale ("ESPI"), the Sicilian governmental entity responsible for funding and promoting local development.

25. Raytheon's experience with Selenia during the early 1960s supported this conclusion. Selenia was an electronics company on the Italian mainland, which was jointly owned by Raytheon and IRI, an Italian conglomerate established and owned by the Government. While Raytheon had supplied the managerial and technical experience which made Selenia the "crown jewel" of companies associated with IRI, IRI had furnished Selenia with access to markets controlled by IRI-affiliated companies and the Italian Government, without which Selenia also would have failed.

26. Further, as Raytheon personnel increased the efficiency of ELSI operations, ELSI had no choice but to develop new product lines in order to absorb excess manufacturing capacity, if it was to be self-sufficient. An Italian partner, such as IRI, could provide ELSI with entree into the Italian market and subcontract work necessary to establish new product lines.

27. Finally, as a result of Italian laws which required that shareholders supply additional capital or cease operations upon the occurrence of specified events, it was evident that an infusion of capital was necessary to sustain ELSI until it received the benefits of having an Italian partner, Mezzogiorno benefits, and new product lines.

28. In order to satisfy ELSI's need for capital, during April of 1967, Raytheon contributed additional capital to ELSI of over four million dollars and furnished two-and-a-half million dollars in guarantees, which we believed would be sufficient for ELSI to continue operations for an additional 12 months. Other Raytheon officials and I, however, expressly advised Italian governmental and industrial officials that if ELSI did not become self-sufficient within that time, Raytheon would not be able to furnish additional capital because of its already sizeable investment in ELSI. Everyone concerned, therefore, understood early in 1967 that, unless ELSI acquired an Italian partner, new product lines, and benefits

under the Mezzogiorno laws, and additional capital, Raytheon would close ELSI's plant, sell ELSI's assets for the highest possible price, and thereby minimize its losses.

29. From April 1967 to April 1968, John Clare and other senior officers of ELSI met repeatedly with Italian officials in order to bring about the acquisition of an Italian partner, new product lines, Mezzogiorno benefits, and additional capital. On three different occasions, I travelled to Italy to join in these discussions.

30. During my second trip to Italy in September of 1967, I attended meetings with senior officials from various Italian ministries and representatives of IRI. At the meeting with IRI, which was attended by IRI's President, an IRI representative stated that the development of ELSI would compete with IRI's own plans for electronics. He added that IRI intended to use its financial resources for other projects and, therefore, did not have any funds which could be utilized to become a partner in ELSI. I then reiterated Raytheon's earlier proposal that ELSI be merged with Selenia, but IRI officials rejected the proposal. Finally, I proposed that Raytheon purchase IRI's share of Selenia in order to provide the financial resources for IRI to become an ELSI partner and provide ELSI with the necessary new product lines. The President of IRI, however, bluntly rejected that proposal and stated that a shortage of funds really was not IRI's problem. As a result of this meeting, it was evident that IRI did not wish to have a major non-Italian partner in the electronics industry, which was rapidly developing in that country, that IRI was concerned solely with advancing its own objectives under the five-year plan for electronics, which was being developed by the Italian Government, and that IRI would take steps to prevent a major non-Italian-owned firm from competing successfully in the Italian electronic industry.

31. The attitude of IRI had an impact upon the opinion of the national and local government officials. For example, ESPI conditioned its investments in ELSI upon participation by IRI.

32. Because we had exhausted every alternative other than contributing additional new capital ourselves, we determined that Raytheon and Matchlett had no choice but to proceed with an orderly liquidation of ELSI. As a result of our large capital contribution and guarantees on behalf of ELSI a year earlier, which were with the understanding that there would be no further such action unless the efforts to make ELSI self-sufficient were successful, we could not justify to our stockholders the investment of additional funds in ELSI. Therefore, we selected Joseph Oppenheim, an electronics engineer and expert at international sales and transactions, to lead the liquidation team for ELSI.

33. Mr. Oppenheim submitted all of his liquidation plans to Thomas L. Phillips, President of Raytheon, and me for approval. We approved Mr. Oppenheim's plans and stated that Raytheon was prepared to back settlements based upon those plans.

34. During my tenure at Paine, Webber, I became well versed in the valuation, purchase, and sale of businesses and their assets. Further, while at Raytheon, I have been involved consistently in the purchase and sale of businesses and their assets. Since I joined Raytheon, the company has purchased many businesses and I have reviewed the valuation of the majority of these businesses before their purchase. As a result of these reviews and my participation in the sale of assets or business lines at Raytheon, I have acquired knowledge of the valuation of assets and production lines in the electronics industry including the goodwill of a business.

35. Based upon my knowledge of the valuation, purchase, and sale of electronics industry assets and my detailed knowledge of ELSI's plant, operation, product

lines, and equipment, I concluded that the conservative liquidation plans developed by Mr. Oppenheim and his team would be successful. On 1 April 1968, however, the Mayor of Palermo requisitioned ELSI's assets and, thereby, precluded us from adhering to our plans.

36. As a result of the Mayor's action, ELSI was forced to abandon its plans for an orderly liquidation and file for bankruptcy. After ELSI filed for bankruptcy, Mr. Oppenheim remained in Italy and attempted to wind up ELSI's affairs in a manner which would be of greatest benefit to ELSI's creditors and stockholders.

37. As threatened by President Carollo, the bankruptcy of ELSI did damage Raytheon's reputation. We did what we could to mitigate this damage. Francis Lee, Raytheon's Assistant Treasurer, and I made trips to Europe for this purpose. We explained the situation to European bankers and the business community. We also employed the Public Relations Service of Guido de Rossi del Lion Nero in Rome to counteract this damage.

(Signed) Charles F. ADAMS.

Commonwealth of Massachusetts,
Middlesex County.

Subscribed and sworn to before me this 17th day of April 1987.

(Signed) Stuart S. HELLER,
Notary Public.

Annex 10

MANUFACTURING AND SALES AGREEMENT BETWEEN RAYTHEON MANUFACTURING COMPANY AND FABBRICA ITALIANA RADDRIZZATORI APPARECCHI RADIOLOGICI, DATED 18 JULY 1952

[Not reproduced]

Annex 11

LETTER OF PARTICIPATION FROM RAYTHEON MANUFACTURING COMPANY TO ELETTRONICA SICULA, S.P.A., DATED 21 OCTOBER 1955, REVISED 15 MARCH 1956

Letter No. 5835.

21 October 1955
(Revised 15 March 1956).

Dear Sirs:

The purpose of this letter is to set forth in a preliminary fashion the terms upon which we are agreeable to participating in additional capitalization of your company (hereinafter called "ELSI"), and transferring to you the Manufacturing and Sales Agreement of 18 July, 1952 between ourselves and the Italian company, Fabbrica Italiana Raddrizzatori Apparecchi Radiologici (hereinafter called "FIRAR"). This letter may be referred to as the "Main Agreement".

A. You have represented to us, through Mr. Joseph Casabianca, that the following are true and correct statements, and we have relied upon them in deciding to participate in your additional capital requirements and to transfer said Agreement:

1. Mr. Casabianca is the President of ELSI and fully authorized to represent it; ELSI is duly organized and existing as a corporation under the laws of Sicily and of the Republic of Italy, and to the best of your knowledge and belief has complied with all applicable laws in the conduct of its business.

2. The financial data showing projected business operations, copies of which, initialed by your President, are annexed hereto as Exhibit 1A, and the profit and loss statements and balance sheets to be furnished pursuant to Section B-2 hereto as Exhibit 1B, fairly represent the financial condition and operations of ELSI for the dates and periods of time as shown thereon, and are accurate, correct, and complete in all material respects.

3. None of ELSI's assets are, as of this date, subject to any mortgage, pledge, lien or encumbrance which adversely affects or impairs its operations, nor are any reflected in the financial statements annexed hereto as Exhibits 1A and 1B.

4. There is not pending against ELSI, nor to the knowledge of its officers is there threatened, any litigation or any proceeding, the outcome of which in the opinion of such officers might adversely affect its continued operations; and ELSI is not obligated under any commitments, contracts or obligations which will have a materially adverse effect upon its operations.

5. The present paid-up capitalization of ELSI consists of Lire 1 million, represented by 1,000 shares of Common Stock each having a value of 1,000 lire; and ELSI deliberated to increase its total capitalization to lire 750 million, being authorized to make such increasing capitalization by the Assessorato alle Finanze of the Government of Sicily, with the advantage of reduced taxation as per decree hereto annexed as Exhibit No. 2 (Reduced registration fees).

6. The Government of Sicily is willing to subscribe and pay for shares of the Common Stock of ELSI which will represent 33⅓ per cent of the presently authorized total capitalization of ELSI, provided that we and the Moro Brothers act similarly so as to account for the remaining 66⅔ per cent prior to the

subscription and payment by the Sicilian Government, and, said willingness will be evidenced by a letter from the Government of Sicily, a copy of which, initialed by your President, will be annexed hereto as Exhibit 3; and the Moro Brothers are willing to subscribe and pay for shares of the Common Stock of ELSI which will represent 52⅔ per cent of said capitalization, provided they are assured of our willingness to participate in said capitalization to the extent of 14 per cent thereof.

7. The Government of Sicily is willing to agree with ELSI that, for a period of five (5) years, before selling or transferring any shares of stock of ELSI which it owns to any other person it will first offer such shares to ELSI for sale at a price equal to the subscription price paid by the Sicilian Government. Said willingness will be evidenced by a letter from said Government of Sicily, a copy of which, initialed by your President, will be annexed hereto as Exhibit 3.

8. The Government of Sicily, acting through the agency called "IRFIS", is willing to lend ELSI lire 700 million for ten (10) years with interest at 5.5%, and such loan shall provide for semi-annual repayments of principal in the amount of lire 35 million each. Said willingness is evidenced by a letter from said IRFIS dated 18 August 1955, a copy of which, initialed by your President, is annexed hereto as Exhibit 4.

9. ELSI is a party to a written agreement, a copy of which, initialed by your President, is annexed hereto as Exhibit 5A, under which it is entitled to buy 7,300 square metres of land in Palermo, on via Villagrazia, which agreement is not limited in time, at a total purchase price of lire 12 million (11 million already paid); and the terms of said Agreement provide that, upon taking title thereto and paying the owner therefor, ELSI will obtain a two-year option to buy certain land adjacent thereto, fronting on said via Villagrazia, as shown upon a map of Palermo, initialed by your President, and annexed hereto as Exhibit 5C. Said Exhibit 5C shall be replaced, prior to our commitment hereunder, by an exact plan of said land, said plan to be designated "Exhibit 5C, amended".

10. ELSI is willing to enter into a written contract, a copy of which, initialed by your President, will be annexed hereto as Exhibit 6A, for the construction, starting on or before 1 January 1956, of a 4,300 square metre (floor area) building substantially similar to plans initialed by your President and annexed hereto as Exhibit 6B, the completion of the same on or before 30 June 1956, and the installation of machinery therein with the expectation of starting production no later than 1 October 1956. With respect to the time schedule specified in this Section A-10, delay in our subscription to and payment for our proposed participation beyond the time herein specified therefor shall extend the schedule to the extent of the delay.

B. You affirmatively covenant with us, as inducements to our entering into this Agreement, as follows:

1. All action necessary to preserve ELSI's corporate existence and its right to conduct business in Italy will be taken by you.

2. No mortgage, pledge, lien or encumbrance which adversely affects or impairs ELSI's operations shall be permitted to attach to any of ELSI's assets, except the real guaranty (pledge and mortgage) on the whole of the assets of ELSI (building and machinery) required by IRFIS as per its letter No. 2408 dated 18 August 1955, hereto annexed as Exhibit 4, as a guaranty of the loan shown at point A8. And you will furnish to us, within thirty (30) days from their approval, copies of ELSI's profit and loss statements for each fiscal year (or partial fiscal year) of its operation, and a balance sheet not more than thirty (30) days old, initialed by your President, to be annexed hereto as Exhibit 1B.

3. ELSI will acquire by purchase from FIRAR all its machinery, licenses, know-how and patent rights pertaining to the manufacture of magnetron, klystron, X-ray and certain other tubes. A copy of each contract or agreement for such purchase will be annexed hereto, initialed by your President, as Exhibit 7 (or as Exhibit 7A, 7B, etc., if there is more than one).

4. Shares of stock of ELSI will, upon their issuance to the Moro Brothers, the Sicilian Government, and ourselves, be lawfully issued, non-assessable, and fully paid. The stock issued shall be subject only to the registration fees fixed in reduced amount as per decree of the Assessorato alle Finanze of the Government of Sicily hereto annexed as Exhibit 2.

C. The following are conditions precedent to our participation in ELSI's additional capitalization and to our transfer of the Manufacturing and Sales Agreement dated 18 July 1952:

1. You shall have furnished us, at your expense, an Opinion of Counsel, which shall be directed to us by counsel who has been previously selected by or approved by us, wherein the legal sufficiency of the documents, corporate proceedings and other transactions taken by the parties mentioned herein to accomplish the purposes of this Agreement and the agreement annexed hereto as exhibits, to carry out the intent hereof, and to consummate the actions specified in the Sections designated A and B or in said exhibits, based upon an examination of all material documents and applicable laws pertinent thereto, shall be reviewed and counsel shall give his opinion that no further legal or corporate proceedings and no further or different documents, instruments, or authorizations are necessary to effectuate and make legally binding upon the parties hereto all said purposes, intents and actions; in the event that it is counsel's opinion that any such further proceedings or further or different documents, instruments, or authorizations are necessary, we shall in no way be obligated hereunder until such further proceedings or further or different documents, instruments, or authorizations have been taken, executed and/or delivered, or furnished, to the reasonable satisfaction of ourselves and of our counsel; provided, that said Opinion shall not be required with respect to the material contained in Exhibits 1A and 1B hereto. A signed copy of said Opinion shall be furnished to us by you, to be annexed hereto, prior to our commitment hereunder, as Exhibit 8.

2. You shall similarly have furnished us with a certificate of independent public accountants, which shall be addressed to us by accountants who have been previously selected by or approved by us and are acceptable to you, that the financial statements described in Sections A-2 and B-2 above fairly present the financial position of ELSI in conformity with generally accepted accounting principles. A signed copy of said certificate shall be furnished to us by you, to be annexed hereto, prior to our commitment hereunder, as Exhibit 9.

3. Our participation in your additional capitalization is contingent upon our obtaining a waiver of our obligations under the Loan Agreement dated 1 May 1951, by and between ourselves, the First National Bank of Boston, and certain other banks. A signed copy of said waiver shall be furnished to you by us, to be annexed hereto, prior to our commitment hereunder, as Exhibit 10.

4. The Manufacturing and Sales Agreement dated 18 July 1952, shall have been amended by the execution of the document annexed hereto as Exhibit 11, a signed copy of which amendment shall be annexed hereto, prior to our commitment hereunder.

5. FIRAR and ELSI shall have executed, with us, a Novation Agreement whereby the Manufacturing and Sales Agreement dated 18 July 1952 between FIRAR and us, as amended by Exhibit 11 hereto, shall be transferred to ELSI,

the effectiveness of said Novation Agreement to be contingent, however, upon our subscription to your additional capitalization and other conditions stated in said Novation Agreement. Fully executed copies of said Novation Agreement shall be annexed hereto as Exhibit 12, prior to our commitment hereunder.

6. The Moro Brothers have subscribed to and, simultaneously with our payment as specified hereinafter, made payment in full for shares of stock of ELSI which shares to be owned by the Moro Brothers will represent 55¾ per cent of the presently authorized capitalization of ELSI.

7. The letters from the Government of Sicily referred to in Sections A-6 and A-7 shall have been received by us and have been annexed hereto, and shall to our reasonable satisfaction duly and effectively express the promises of said Government as they have been represented by you herein.

8. All of the exhibits specified herein shall have been received by us and found to our reasonable satisfaction to express the purposes for which they are included herein, provided, that at our sole option your obligation hereunder may be waived in writing as to exhibits specified by us in such written waiver.

Upon our being assured, as described in the foregoing paragraphs of this letter, as to the correctness of the information and data which you have furnished us, and upon the satisfaction of the conditions precedent specified in Section C above, we agree *(a)* to subscribe for shares of the Common Stock of ELSI which will amount to 14 per cent of its presently authorized capitalization and make payment therefor, such payment to be made by us within ten (10) days following the satisfaction of all the conditions precedent specified in Section C hereof, provided, that if such payment does not become due before 30 June 1956, we shall be released, without penalty, from all commitments under this Agreement or any of the exhibits hereto, and *(b)* simultaneously with such payment to make effective the Novation Agreement (Exhibit 12 hereto) whereby there will be transferred to you the said Manufacturing and Sales Agreement dated 18 July 1952, as amended by Exhibit 11 hereto.

Please sign and return to us the enclosed duplicate copy of this letter to signify your acceptance of the foregoing, your signature to consist of that of your President, and that of each member of your present Board of Directors.

Very truly yours,

RAYTHEON MANUFACTURING COMPANY.

(Signed) Ray C. ELLIS,
Vice President.

ACCEPTED and AGREED to as of the 21st day of October, 1955:

L'ELETTRONICA SICULA, S.p.A.

(Signed) Joseph CASABIANCA
President.

(Signed) Avv. Calogero CARONNA,
Director.

EXECUTED as of the 26th day of February, 1956:

L'ELETTRONICA SICULA, S.p.A.

(Signed) Tomaso MORO,
President.

(Signed) Dr. Joseph CASABIANCA,
Amministratore Delegato.

(Signed) Ing. Aldo PROFUMO,
Amministratore Delegato.

Annex 12

SELECTED UNITED STATES DOLLAR-ITALIAN LIRE CONVERSION RATES FROM *THE WALL STREET JOURNAL* (FOR DATES 29 MARCH 1968, 19 APRIL 1968, 29 APRIL 1968, 30 JUNE 1971) AND *THE WASHINGTON POST* (FOR DATES 1 APRIL 1968, 11 JULY 1969, 24 JANUARY 1974)

[Not reproduced]

Annex 13

Affidavit of Arthur Schene, Former Vice President-Controller of Raytheon Company, Dated 17 April 1987

AFFIDAVIT OF ARTHUR SCHENE CONCERNING RAYTHEON COMPANY'S INVESTMENT IN RAYTHEON ELSI

I, Arthur Schene, personally appeared before a Notary Public in the Commonwealth of Massachusetts and, upon being duly sworn, stated that:

1. I am a retired executive of Raytheon Company who continues to work for the company as a part-time management consultant. I was born in New York, New York, on 22 July 1916. I received a degree in accounting from the College of the City of New York in 1946. During the period from 1946 through 1950 I was employed as an auditor by the public accounting firm of Scovell, Wellington and Company (who have since merged with Coopers and Lybrand). I qualified as a Certified Public Accountant in the State of New York while working for that firm.

2. During the period from 1950 to 1958, I was Treasurer and Controller of Airtron, Inc., a small but very successful electronic components company in Linden, New Jersey. The company was acquired by Litton Industries, within a year after I resigned to join Raytheon Company in Waltham, Massachusetts.

3. I started working for Raytheon Company, an electronics manufacturer, in 1958 as Controller of their Bedford Laboratory. I was subsequently promoted to Controller of the Missile Systems Division (the largest division), then to Assistant Corporate Controller and later Corporate Controller. I was elected a Vice-President of the company in 1962 and continued to serve as Vice-President-Controller until my retirement in 1981. Since then, I have worked for the company on a continuous but part-time basis as a consultant.

4. During my tenure as Vice-President-Controller, I made many trips to Europe to review the growing electronics operations in that area. From 1963 to 1967, I went to Europe about four times per year and visited the Raytheon-ELSI ("ELSI") operation on almost every trip.

5. Virtually all of my business experience since 1950 has been as a financial executive of first a small and then a large company in the electronics industry.

6. The following is a statement covering my knowledge of the circumstances relating to ELSI.

7. Between 1956 and 1967, Raytheon Company and its wholly owned subsidiary, Machlett Laboratories, Inc., invested $11,899,300 in ELSI timed as follows:

Period	*Amount*	*Per Cent Owned After Investment*
May 1956 to November 1961	$673,400	Less than 50%
May 1963	3,535,300	60%
December 1964	3,202,400	80%
June 1967	4,488,200	100%
	$11,899,300	

The investment during the early years (through 1962) was modest and Raytheon owned less than 50 per cent of the company. From 1963 through 1967, Raytheon and Machlett Laboratories invested over $11 million and acquired control and an increasing share of the company until they owned 100 per cent in 1967. This was due to the inability of other stockholders to make their share of the necessary capital contributions.

8. During that period, significant funds were expended to upgrade the plant and to provide the equipment needed for the manufacture of sophisticated electronic equipment. The amounts invested in property, plant and equipment during the years 1963-1967 are shown below:

Year Ended	*Millions of Lire*	*Dollars*
9/30/63	879.6	1,407,400
9/30/64	1291.0	2,065,600
9/30/65	1274.1	2,038,600
9/30/66	357.1	571,400
9/30/67	373.5	597,600

9. ELSI management also devoted a substantial amount of money, time and energy to the training of personnel recruited from the Palermo area in the manufacture and testing of the electronic devices. From 1964 to 1967, the company employment averaged in excess of 1,000 persons of which over 800 were in manufacturing and manufacturing services.

10. A sizeable amount of money was expended to make a major reduction in accounts payable which had grown to over 5.8 billion lire ($9 million) at 9/30/62 with large overdue balances. During the year ended 9/30/63, the payables were reduced by approximately 3 billion lire ($4,800,000).

11. Since the funds invested by Raytheon were not sufficient to cover these expenditures, ELSI required a significant increase in bank loans, the major portion of which were guaranteed by Raytheon Company.

12. The investment in management, facilities and training resulted in a major increase in sales during the years through 9/30/66 as indicated below:

Year Ended	*Millions of Lire*	*Dollars*
9/30/62	2600.0	4,160,000
9/30/63	4061.0	6,497,600
9/30/64	8072.1	12,915,400
9/30/65	8430.7	13,489,100
9/30/66	8648.4	13,837,400
9/30/67	7263.2	11,621,100

Sales grew significantly in the year ended 9/30/63, almost doubled in the year ended 9/30/64, and then continued to increase at a modest rate during the next two years. The company also showed an improving trend in operating profit through 9/30/65 as shown below:

Year Ended	*Millions of Lire*	*Dollars*
9/30/63	−236.1	−377,800
9/30/64	497.3	795,700
9/30/65	791.5	1,266,400
9/30/66	9.9	15,800
9/30/67	−1721.1	−2,753,800

During the year ended 30 September 1967 there was a downturn in sales which resulted in an operating loss. On my visits to Palermo to review operations two of the principal reasons given for their problems were:

(a) Inability to secure the benefits supposedly available to companies in the Mezzogiorno.
(b) Difficulty in making sales to Italian government agencies and large Italian companies.

13. Raytheon Company management determined that it must more actively pursue the benefits available to companies in the Mezzogiorno area and that instead of 100 per cent American ownership, they needed a well-connected, active Italian partner in order to achieve market entry in Italy. Raytheon Company representatives met with various government representatives to try to achieve these objectives but the efforts proved unsuccessful. When it became apparent that this approach was unlikely to be successful, Raytheon Company and Machlett Laboratories developed a plan for the orderly disposal of ELSI over about six months during 1968. While this plan was being developed, Raytheon and ELSI representatives continued to meet with Italian government representatives in an ongoing attempt to find a way for the company to continue to operate.

14. As indicated above, the early growth in sales and operating profit gave a strong indication that ELSI had the potential to be a successful business and employer in the Mezzogiorno with any reasonable opportunity. Its assets were soundly valued and it had the technological capability to produce sophisticated electronic components. Under these circumstances, the disposal of the company to an organization that would have continued operations should have been made for at least book value. This should have been the case even if the several product lines had been sold as separate packages.

15. The aggregate book valuation of the assets represents a fair measure of their value on a going concern basis. Any downward adjustments in the valuation of specific assets would have been more than offset by a reasonable amount of goodwill and the upward adjustment of other assets. For example, had IRI moved in in 1968 and taken over the operation with their ability to open up markets, at least full asset value should have been realized by them.

16. Raytheon Company management estimated that a minimum of 10.8 billion lire would have been realized from the sale of the assets on a worst-case basis in liquidation. This would have enabled Raytheon to settle with all creditors on the following terms:

Preferred creditors	100%
Secured creditors	100%
Guaranteed bank loans	100%
Small creditors	100%
Non-guaranteed bank loans	50%
Accounts due Raytheon Company and Raytheon Service Company	40-50%

17. The estimates of recovery were prepared by individuals thoroughly familiar with the value and marketability of the assets. The accounts receivable of 2.8792 billion lire ($4,606,000) were of such quality that Coopers and Lybrand determined that a reserve of only 80.6 million lire ($129,000) was adequate during their last audit at 30 September 1967. It was fully expected that the receivables would have been collected in full. The inventories were soundly valued on a going-concern basis and on a worst-case basis at least 65 per cent of book value

should have been realized on this material (after excluding the so-called "taxed reserve" item which had no value). More than 4 billion lire ($6,400,000) had been spent during the years 1963-1967 in acquiring new capital equipment and upgrading the existing facilities. The plant and equipment was relatively new or in sound condition and the cost to replace it would have exceeded book value.

18. If Raytheon had handled the liquidation it would have guaranteed the settlements outlined above with banks and other creditors. Furthermore, the liquidation would have been completed in a much shorter period of time which would have significantly reduced the liquidation expenses.

19. The financial data reflected in the claim has been reviewed and confirmed by me as being based on the following sources:

(*a*) Audit reports prepared by Coopers and Lybrand, an international audit firm, for the years ended 9/30/62 through 9/30/67.

(*b*) Records and analyses prepared by Raytheon Company financial, legal, and operating departments in the normal course of business during the years 1963 through 1968.

(*c*) The balance sheet at 3/31/68 was prepared on a basis consistent with the valuations in the Coopers and Lybrand audit report of 9/30/67 using actual ELSI accounting records through 12/31/67 and a conservative extrapolation to 3/31/68. This extrapolation was prepared shortly after 3/31/68 and has not been altered.

(*d*) All computations of actual and potential liquidation results and damages have been prepared from the above data without modification.

20. The following is a list of schedules attached to this affidavit and a brief explanation of their content:

21. *Schedule A* — provides a history of the capital investment made by consolidated Raytheon Company in ELSI. It indicates when advances were made and when those advances were converted to investment. Of the amounts invested in 1967, $54,100 was paid by Machlett Laboratories, Inc., a wholly owned subsidiary of Raytheon Company. The remainder of the total investment was paid by Raytheon Company.

22. *Schedules B1, B2 and B3* — represent the financial statements per the books for various periods from 9/30/62 to 3/31/68. All of the data except the 3/31/68 were taken from annual audit reports prepared by Coopers and Lybrand, an international auditing firm. The data at 3/31/68 was prepared from operating reports through 12/31/67 and an extrapolation of those results to 3/31/68 from available records and documents on a basis consistent with the annual audit reports.

23. *Schedules C1, C2, C3 and C4* — reflect various valuations of the assets at 3/31/68. Book value is based on the amounts shown on Schedule B1. The minimum liquidation values reflect conservative estimates prepared by members of management who were thoroughly familiar with the quality and marketability of the assets.

24. *Schedule D* — provides an analysis of the various liabilities at 3/31/68 and indicates their priority in liquidation.

25. *Schedule E* — shows the estimated distribution of proceeds from the disposal of the assets at book value.

26. *Schedule F* — shows the estimated distribution of proceeds from the disposal of the assets at estimated minimum liquidation values.

27. *Schedules G1, G2, G3 and G4* — show the computation of damages to Raytheon Company based on disposal of the assets of ELSI at book value. The interest rates are the weighted average prime rates for each year.

28. *Schedules H1, H2, H3 and H4* — show the computation of damages to Raytheon Company based on disposal of the assets of ELSI at estimated minimum liquidation values. The interest rates are the weighted average prime rate for each year.

29. *Schedule I1* — shows the actual amounts paid by Raytheon Company to settle the guaranteed bank loans and the accrued interest thereon.

30. *Schedule I2* — shows the estimated payment that would have been required from Raytheon Company if the assets of ELSI had yielded only the estimated minimum liquidation values. If the assets had yielded book value, the proceeds would have been sufficient to pay all liabilities in full and no payment would have been required by Raytheon on the bank loans.

31. *Schedule J* — shows a comparison of the actual writeoff of accounts receivable by Raytheon Company and its wholly owned subsidiary, Raytheon Service Company, with the amount that would have been written of if the assets of ELSI had been disposed of for the estimated minimum liquidation values. If the assets had been disposed of at book value all liabilities, including the payables to Raytheon Company, would have been paid in full.

32. *Schedule K* — provides an analysis of the legal expenses incurred by Raytheon Company in connection with the ELSI matter.

(*Signed*) Arthur SCHENE.

Commonwealth of Massachusetts April 17, 1987.

Then personally appeared before me the above named Arthur Schene, who acknowledged the foregoing to be his free act and deed, before me

(*Signed*) C. Henry RESNICK,
Notary Public.

Schedule A

RAYTHEON ELSI, INVESTMENT BY RAYTHEON COMPANY AND MACHLETT LABORATORIES, INC.

(*Dollars in Thousands*)

	Investment		*Advances*		*Total*	
Date	*Amount*	*Total*	*Amount*	*Total*	*Amount*	*Total*
5/56	$131.2	131.2	0.0	0.0	131.2	131.2
6/59	$113.1	244.3	0.0	0.0	113.1	244.3
10/59	$284.2	528.5	0.0	0.0	284.2	528.5
8/61	$0.0	528.5	305.7	305.7	305.7	834.2
11/61	$144.9	673.4	0.0	305.7	144.9	979.1
11/61	$0.0	673.4	91.8	397.5	91.8	1070.9
6/62	$0.0	673.4	553.6	951.1	553.6	1624.5

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	Investment		*Advances*		*Total*	
Date	*Amount*	*Total*	*Amount*	*Total*	*Amount*	*Total*
12/62	$0.0	673.4	2584.2	3535.3	2584.2	4208.7
5/63	$3535.3	4208.7	– 3535.3	0.0	0.0	4208.7
5/64	$0.0	4208.7	1920.2	1920.2	1920.2	6128.9
6/64	$0.0	4208.7	1282.2	3202.4	1282.2	7411.1
12/64	$3202.4	7411.1	– 3202.4	0.0	0.0	7411.1
6/67	$0.0	7411.1	4007.1	4007.1	4007.1	11418.2
6/67	$0.0	7411.1	481.1	4488.2	481.1	11899.3
6/67	$4488.2	11899.3	– 4488.2	0.0	0.0	11899.3

Note: The investment in 1967 includes $54.1 which was invested by Machlett Laboratories, Inc., a wholly owned subsidiary of Raytheon Company.

Schedule B1

RAYTHEON ELSI, BALANCE SHEETS PER BOOKS

(Lire in Millions)

	9/30/62	*9/30/63*	*9/30/64*	*9/30/65*	*9/30/66*	*9/30/67*	*3/31/68*
Cash	13.1	167.6	183.8	80.3	18.6	28.1	21.3
Accounts Receivable	2500.7	2702.6	3364.3	3668.4	3965.2	3419.2	2879.2
Inventories	5358.2	6292.7	5644.1	5553.0	6122.5	6765.2	6602.7
Prepaid Expenses	131.3	46.4	334.7	162.5	176.3	17.5	13.7
Total Current Assets	8003.3	9209.3	9526.9	9464.2	10282.6	10230.0	9516.9
Investments	275.7	376.3	392.9	591.3	50.7	119.2	119.2
Fixed Assets at Cost	3826.6	4706.2	5997.2	7271.3	7628.4	8465.5	7270.4
Reserve for Depreciation	– 462.1	– 526.7	– 885.1	– 1384.6	– 1944.3	– 2511.4	– 1506.0
Deferred Charges	1418.2	2644.1	2522.5	2161.6	2264.2	1653.0	1653.0
Total Assets	13061.7	16409.2	17554.4	18103.8	18281.6	17956.3	17053.5
Accounts Payable	5794.7	2776.6	4873.1	1980.0	2698.6	1554.2	1381.3
Accrued Liabilities	52.0	292.3	323.8	247.2	455.9	558.2	1004.4
Reserve for Severance Pay	89.2	170.7	277.8	354.0	434.4	538.9	584.9
Taxed Reserve	0	0	0	0	0	862.4	862.3
Total Operating Liabilities	5935.9	3239.6	5474.7	2581.2	3588.9	3513.7	3832.9

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	9/30/62	9/30/63	9/30/64	9/30/65	9/30/66	9/30/67	3/31/68
Bank Overdraft	3596.2	7149.9	4685.9	7513.5	7344.9	8208.4	7929.0
Long-Term Loans	1856.5	2948.3	3678.5	4370.1	5354.9	4915.5	5041.6
Total Debt	5452.7	10098.2	8364.4	11883.6	12699.8	13125.9	12970.6
Capital Stock	2000.0	4300.0	2000.0	4000.0	4000.0	1500.0	4000.0
Capital Subscription			2000.0			2500.0	0.0
Accumulated Losses	− 326.9	− 1228.6	− 284.7	− 361.0	− 2007.1	− 2681.3	− 3750.0
Total Equity	1673.1	3071.4	3715.3	3639.0	1992.9	1318.7	250.0
Total Liabilities and Equity	13061.7	16409.2	17554.4	18103.8	18281.6	17956.3	17053.5

Schedule B2

RAYTHEON ELSI, CASH FLOW PER BOOKS

(Lire in Millions)

	Period ended						*Total*
	9/30/63	*9/30/64*	*9/30/65*	*9/30/66*	*9/30/67*	*3/31/68*	*10/1/62 to 3/31/68*
Cash Beginning	13.1	167.6	183.8	80.3	18.6	28.1	13.1
Net Income	− 901.7	− 330.7	− 47.5	− 855.8	− 2681.3	− 1068.7	− 5885.7
Surplus Adjustments	0.0	− 1025.4	− 28.8	− 790.3	− 492.9	0.0	− 2337.4
Depreciation	64.6	358.4	499.5	559.7	567.1	234.6	2283.9
(Increase) Decrease in Accounts Receivable	− 201.9	− 661.7	− 304.1	− 296.8	546.0	540.0	− 378.5
(Increase) Decrease in Inventories	− 934.5	648.6	91.1	− 569.5	372.3	162.5	− 229.5
Increase in Inventories from Taxed Reserve	0.0	0.0	0.0	0.0	− 1015.0	0.0	− 1015.0
(Increase) Decrease in Prepaid Expenses	84.9	− 288.3	172.2	− 13.8	158.8	3.8	117.6
(Increase) Decrease in Investments	− 100.6	− 16.6	− 198.4	540.6	− 168.9	0.0	56.1
Decrease in Investments from Taxed Reserve	0.0	0.0	0.0	0.0	100.4	0.0	100.4
Investments in Fixed Assets	− 879.6	− 1291.0	− 1274.1	− 357.1	− 373.5	− 44.9	− 4220.2
Increase in Fixed Assets from Taxed Reserve	0.0	0.0	0.0	0.0	− 463.6	0.0	− 463.6
(Increase) decrease in Deferred Charges	− 1225.9	121.6	360.9	− 102.6	611.2	0.0	− 234.8

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	Period ended						*Total 10/1/62 to 3/31/68*
	9/30/63	*9/30/64*	*9/30/65*	*9/30/66*	*9/30/67*	*3/31/68*	
Increase (Decrease) in Accounts Payable	−3018.1	2096.5	−2893.1	718.6	−1660.3	−172.9	−4929.3
Increase in Accounts Payable from Taxed Reserve	0.0	0.0	0.0	0.0	515.9	0.0	515.9
Increase (Decrease) in Accrued Liabilities	240.3	31.5	−76.6	208.7	102.3	446.2	952.4
Increase (Decrease) in Reserve for Severance Pay	81.5	107.1	76.2	80.4	104.5	46.0	495.7
Increase (Decrease) in Taxed Reserve	0	0	0	0	862.4	−0.1	862.3
Total Operating Cash Flow	−6791.0	−250.0	−3622.7	−877.9	−2914.6	146.5	−14309.7
Capital Investment	2300.0	2000.0	0.0	0.0	2500.0	0.0	6800.0
Increase (Decrease) in Bank Overdraft	3553.7	−2464.0	2827.6	−168.6	863.5	−279.4	4332.8
Increase (Decrease) in Long Term Debt	1091.8	730.2	691.6	984.8	−439.4	126.1	3185.1
Total Financing Cash Flow	6945.5	266.2	3519.2	816.2	2924.1	−153.3	14317.9
Cash-End	167.6	183.8	80.3	18.6	28.1	21.3	21.3

Schedule B3

RAYTHEON ELSI, INCOME STATEMENT PER BOOKS

(Lire in Millions)

	Period ended					
	9/30/63	*9/30/64*	*9/30/65*	*9/30/66*	*9/30/67*	*03/31/68*
Sales	4061.0	8072.1	8430.7	8648.4	7263.2	N/A
Operating Expenses	4297.1	7574.8	7639.2	8638.5	8984.3	N/A
Operating Profit (Loss)	−236.1	497.3	791.5	9.9	−1721.1	N/A
Interest Expense	665.6	828.0	839.0	865.7	960.2	N/A
Net Profit (Loss)	−901.7	−330.7	−47.5	−855.8	−2681.3	−1068.7

Schedule C1

RAYTHEON ELSI, ESTIMATED *VS.* ACTUAL REALIZATION FROM TOTAL ASSETS ON HAND AT 3/31/68

(Lire in Millions)

	Book Value	*Minimum Liquidation Value*	*Curator Estimate*	*Amount Realized*
Cash	21.3	21.3	21.3	
Accounts Receivable	2879.2	2853.8	2500.0	
Inventories	6602.7	3500.0	3500.0	
Prepaid Expenses	13.7	13.7	0.0	
Total Current Assets	9516.9	6388.8	6021.3	3120.9
Investments in Subsidiaries	119.2	0.0	0.0	
Fixed Assets	5764.4	4350.0	4560.6	
Studies in Process	303.0	100.0	0.0	
Patents and Studies	853.0	0.0	800.0	
Other Deferred Costs	497.0	0.0	0.0	
Total Non-Current Assets	7536.6	4450.0	5360.6	3252.9
Total Assets	17053.5	10838.8	11381.9	6373.8

Schedule C2

RAYTHEON ELSI, ESTIMATE OF REALIZATION FROM ACCOUNTS RECEIVABLE AT 3/31/68

(Lire in Millions)

	Book Value	*Minimum Liquidation Value*	*Curator Estimate*
Notes	128.1	128.1	
Trade Accounts	2150.8	2150.8	
Affiliated Companies	106.0	0.0	
Quantity Discounts	25.5	20.0	
Klystron Price Revision	251.7	180.0	
Reimbursement of IGE Tax on Exports — Accrued	47.2	47.2	
Reimbursement of IGE Tax on Exports — Billed	71.9	71.9	
Reimbursement of SETEL Expenses	14.3	9.0	
Advances to Employees	57.0	57.0	
Deposits with Customs	21.1	21.1	
Bid Deposits	24.5	24.5	
Prepaid Employee Taxes	25.0	25.0	
Other	36.7	119.2	
Reserve	80.6	0.0	
	2879.2	2853.8	2500.0

Schedule C3, Page 1

RAYTHEON ELSI, ESTIMATE OF REALIZATION FROM INVENTORIES AT 3/31/68

(Lire in Millions)

	Book Value	*Minimum Liquidation Value*	*Curator Estimate*
Raw Material and Parts			
Cathode Ray Tubes	566.3	430.0	
Magnetron Tubes	310.1	300.0	
X-ray Tubes	79.2	44.0	
Semiconductors	222.6	105.0	
Surge Arresters	46.0	25.0	
Complex Components	2.7	2.7	
Other	144.1	76.1	
Total — Raw Materials and Parts	1371.0	982.8	
Semifurnished Goods			
Cathode Ray Tubes	824.4	375.0	
Magnetron Tubes	248.1	141.0	
X-ray Tubes	159.1	59.0	
Semiconductors	151.7	68.0	
Surge Arresters	24.1	17.0	
Complex Components	0.0	0.0	
Other	0.0	0.0	
Total — Semifinished Goods	1407.4	660.0	

Schedule C3, Page 2

RAYTHEON ELSI, ESTIMATE OF REALIZATION FROM INVENTORIES AT 3/31/68

(Lire in Millions)

	Book Value	*Minimum Liquidation Value*	*Curator Estimate*
Work in Process			
Cathode Ray Tubes	100.6	100.6	
Magnetron Tubes	518.3	348.0	
X-ray Tubes	59.8	50.0	
Semiconductors	127.4	110.0	
Surge Arresters	6.4	6.0	
Complex Components	9.8	9.8	
Other	0.0	0.0	
Total — Work in Process	822.3	624.4	
Finished Goods			
Cathode Ray Tubes	36.0	36.0	
Magnetron Tubes	566.6	424.0	
X-ray Tubes	237.1	188.0	

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	Book Value	*Minimum Liquidation Value*	*Curator Estimate*
Semiconductors	954.8	467.0	
Surge Arresters	54.1	31.0	
Complex Components	1.0	1.0	
Other	0.0	0.0	
Total — Finished Goods	1849.6	1147.0	
Maintenance and Repair Parts	131.0	125.7	
Taxed Reserve	1015.0	0.0	
Military Startup	68.1	0.0	
Difference	−61.7	−39.9	
	6602.7	3500.0	3500.0

Schedule C4

RAYTHEON ELSI, ESTIMATE OF REALIZATION FROM FIXED ASSETS AT 3/31/68

(Lire in Millions)

	Book Value	*Minimum Liquidation Value*	*Professor M. Puglisi*[1]
Land and Buildings	1082.6	1000.0	1717.0
Machinery and Equipment	5329.6	3050.0	2782.5
Furniture, Fixtures and Autos	210.5	150.0	61.1
Construction in Process	184.1	150.0	0.0
Taxed Reserve	463.6	0.0	0.0
Reserve for Depreciation	−1506.0	0.0	0.0
	5764.4	4350.0	4560.6

[1] Court appointed consultant.

Schedule D

RAYTHEON ELSI, PRIORITY OF LIABILITIES IN LIQUIDATION

(Lire in Millions)

				General Creditors				
	Total Liabilities	*Preferred Creditors*	*Secured Creditors*	*Banks Guaranteed*	*Banks Other*	*Other*	*Raytheon*	*Net Worth*
Accounts Payable — Raytheon Company	1098.3						1098.3	
Other	283.0					283.0		
Accrued Liabilities — Employee Insurance	223.0	223.0						
Imposts	64.5	64.5						
Taxes	9.4	9.4						
Payroll	4.0	4.0						
Fringe Benefits	75.0	75.0						
Sales Commission	42.0	42.0						
Sales Incentives	34.0	34.0						
Interest — IRFIS (to 12/31/67)	41.9		41.9					
Banco di Sicilia (to 12/31/67)	30.0		30.0					
Other	243.0			243.0				
Translator AG	20.0					20.0		
Owens Illinois Patent Rights	28.5					28.5		
Directors Fees	2.3					2.3		
Quantity Discounts	149.9					149.9		
Promotional Expenses	12.0					12.0		
EMASARCO	2.0					2.0		
Other	22.9					22.9		

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	Total Liabilities	*Preferred Creditors*	*Secured Creditors*	*General Creditors*				*Net Worth*
				Banks Guaranteed	*Banks Other*	*Other*	*Raytheon*	
Reserve for Employee Severance Pay	584.9	584.9						
Bank Loans — Banca Commerciale Italiana	2988.0			2000.0	988.0			
Banco Nazionale del Lavoro	3283.0			2140.0	1143.0			
Banco di Roma	972.0			130.0	842.0			
Banco di Sicilia	2156.0		1406.0	750.0				
Credito Italiano	513.0				513.0			
Cassa di Risparmio	555.0				555.0			
First National City Bank	162.0			142.7	19.3			
IRFIS	2341.6		2341.6					
Total Creditors	15941.2	1036.8	3819.5	5405.7	4060.3	520.6	1098.3	
Taxed Reserve	862.3							862.3
Net Worth	250.0							250.0
	17053.5	1036.8	3819.5	5405.7	4060.3	520.6	1098.3	1112.3

Schedule E

RAYTHEON ELSI, ESTIMATED DISTRIBUTION OF PROCEEDS REALIZED FROM DISPOSAL OF ASSETS BASED ON BOOK VALUE

(Lire in Millions)

						Distribution of Proceeds					
	Liabilities per 3/31/68 Balance Sheet	*Costs After 3/31/68*	*Under accrued at 3/31/68*	*Elimination of Net Worth*	*Total Adjusted Claims*	*Priority and Secured Claims*	*100% of Other Creditors*	*100% of Unguaranteed Bank Loans*	*100% to Others*	*Total Distribution*	*Resulting Proceeds to Raytheon*
Priority Claims											
Preferred Creditors	1036.8				1036.8	1036.8				1036.8	
Costs after 3/31/68		270.0			270.0	270.0				270.0	
Administration Expense		100.0			100.0	100.0				100.0	
Total Priority Claims	1036.8	370.0			1406.8	1406.8				1406.8	
Secured Claims											
IRFIS	2383.5				2383.5	2383.5				2383.5	
Banco di Sicilia	1436.0				1436.0	1436.0				1436.0	
Total Secured Claims	3819.5				3819.5	3819.5				3819.5	
Unsecured Claims											
Banks — Guaranteed by Raytheon	5162.7				5162.7				5162.7	5162.7	
Interest on Guaranteed Loans	243.0	305.8			548.8				548.8	548.8	
Banks — Not Guaranteed	4060.3				4060.3			4060.3		4060.3	

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						Distribution of Proceeds					
	Liabilities per 3/31/68 Balance Sheet	*Costs After 3/31/68*	*Under accrued at 3/31/68*	*Elimination of Net Worth*	*Total Adjusted Claims*	*Priority and Secured Claims*	*100% of Other Creditors*	*100% of Unguaranteed Bank Loans*	*100% to Others*	*Total Distribution*	*Resulting Proceeds to Raytheon*
Other Creditors	520.6				520.6		520.6			520.6	
Raytheon and Raytheon Serv. Co.	1098.3		45.5		1143.8				1143.8	1143.8	
Total Unsecured Claims	11084.9	305.8	45.5		11436.2		520.6	4060.3	6855.3	11436.2	
Stockholder Equity	1112.3			−1112.3	0.0						
Total Liabilities	17053.5	675.8	45.5	−1112.3	16662.5	5226.3	520.6	4060.3	6855.3	16662.5	
Proceeds Available	1705.5				17053.5	5226.3	520.6	4060.3	6855.3	16662.5	391.0

Schedule F

RAYTHEON ELSI, ESTIMATED DISTRIBUTION OF PROCEEDS REALIZED FROM DISPOSAL OF ASSETS BASED ON ESTIMATE MINIMUM LIQUIDATION VALUE

(Lire in Millions)

						Distribution of Proceeds					
	Liabilities Per 3/31/68 Balance Sheet	*Costs After 3/31/68*	*Underaccrued at 3/31/68*	*Elimination of Net Worth*	*Total Adjusted Claims*	*Priority and Secured Claims*	*100% of Other Creditors*	*50% of Unguaranteed Bank Loans*	*42.89% to Others*	*Total Distribution*	*Resulting Cost to Raytheon*
Priority Claims											
Preferred Creditors	1036.8				1036.8	1036.8				1036.8	
Costs after 3/31/68		270.0			270.0	270.0				270.0	
Administration Expense		100.0			100.0	100.0				100.0	
Total Priority Claims	1036.8	370.0			1406.8	1406.8				1406.8	
Secured Claims											
IRFIS	2383.5				2383.5	2383.5				2383.5	
Banco di Sicilia	1436.0				1436.0	1436.0				1436.0	
Total Secured Claims	3819.5				3819.5	3819.5				3819.5	
Unsecured Claims											
Banks — Guaranteed by Raytheon	5162.7				5162.7				2305.8	2305.8	2856.9
Interest on Guaranteed Loans	243.0	305.8			548.8				245.1	245.1	303.7
Banks — Not Guaranteed	4060.3				4060.3			2030.2		2030.2	
Other Creditors	520.6				520.6		520.6			520.6	
Raytheon and Raytheon Serv. Co.	1098.3		45.5		1143.8				510.8	510.8	633.0
Total Unsecured Claims	11084.9	305.8	45.5		11436.2		520.6	2030.2	3061.7	5612.5	3793.6
Stockholder Equity	1112.3			−1112.3	0.0						
Total Liabilities	17053.5	675.8	45.5	−1112.3	16662.5	5226.3	520.6	2030.2	3061.7	10838.8	
Proceeds Available	10838.8				10838.8	5226.3	520.6	2030.2	3061.7	10838.8	

Schedule G1

RAYTHEON ELSI, COMPUTATION OF DAMAGES TO RAYTHEON BASED ON BOOK VALUE

($ in 000's)

	Actual Loss	*Anticipated Loss*	*Damages*
Investment	11899.3	11273.7	625.6
Guaranteed Loans	8282.8	0.0	8282.8
Interest on Guaranteed Loans	1000.8	0.0	1000.8
Receivables Due Raytheon Company	1830.0	0.0	1830.0
Legal Expenses	939.8	0.0	939.8
Total Excluding Interest	23952.7	11273.7	12679.0
Interest			53395.3
Total			66074.3

Schedule G2

RAYTHEON ELSI, COMPUTATION OF DAMAGES TO RAYTHEON BASED ON BOOK VALUE

($ in 000's)

					Interest		
Year Loss	*Actual Loss*	*Anticipated Loss*	*Difference*	*Beginning Balance*	*Rate*	*Amount*	*Ending Balance*
1956	$131.2	131.2	0.0	0.0		0.0	0.0
1959	397.3	397.3	0.0	0.0		0.0	0.0
1961	542.4	542.4	0.0	0.0		0.0	0.0
1962	3137.8	3137.8	0.0	0.0		0.0	0.0
1964	3202.4	3202.4	0.0	0.0		0.0	0.0
1967	4488.2	4488.2	0.0	0.0		0.0	0.0
1968	10749.2	−625.6	11374.8	0.0		0.0	11374.8
1969	63.7		63.7	11374.8	7.96%	905.4	12343.9
1970	433.0		433.0	12343.9	7.69%	949.2	13726.1
1971	47.4		47.4	13726.1	5.75%	786.5	14560.0
1972	34.9		34.9	14560.0	5.28%	768.8	15363.7
1973	0		0.0	15363.7	8.07%	1239.9	16603.6
1974	0		0.0	16603.6	10.80%	1793.2	18396.8
1975	2.4		2.4	18396.8	7.88%	1449.7	19848.9
1976	67.9		67.9	19848.9	6.84%	1357.7	21274.5
1977	10.5		10.5	21274.5	6.73%	1431.8	22716.8
1978	159.1		159.1	22716.8	9.06%	2058.1	24934.0
1979	23.7		23.7	24934.0	12.67%	3159.1	28116.8
1980	145.0		145.0	28116.8	15.16%	4262.5	32524.3
1981	87.1		87.1	32524.3	18.85%	6130.8	38742.2
1982	52.2		52.2	38742.2	14.84%	5749.3	44543.7
1983	111.8		111.8	44543.7	10.79%	4806.3	49461.8
1984	27.3		27.3	49461.8	12.05%	5960.1	55449.2
1985	38.2		38.2	55449.2	9.93%	5506.1	60993.5
1986			0.0	60993.5	8.33%	5080.8	66074.3
Total	$23952.7	11273.7	12679.0			53395.3	66074.3

Schedule G3

RAYTHEON ELSI, ACTUAL LOSS SUSTAINED BY RAYTHEON COMPANY

($ in 000's)

		Guaranteed Loans				
Year	*Investment*	*Principal*	*Interest*	*Accounts Receivable*	*Legal Expenses*	*Total*
1956	$131.2					131.2
1959	397.3					397.3
1961	542.4					542.4
1962	3137.8					3137.8
1964	3202.4					3202.4
1967	4488.2					4488.2
1968		8075.8	821.5	1830.0	21.9	10749.2
1969					63.7	63.7
1970		207.0	179.3		46.7	433.0
1971					47.4	47.4
1972					34.9	34.9
1975					2.4	2.4
1976					67.9	67.9
1977					10.5	10.5
1978					159.1	159.1
1979					23.7	23.7
1980					145.0	145.0
1981					87.1	87.1
1982					52.2	52.2
1983					111.8	111.8
1984					27.3	27.3
1985					38.2	38.2
Total	$11899.3	8282.8	1000.8	1830.0	939.8	23952.7

Schedule G4

RAYTHEON ELSI, ANTICIPATED LOSS BY RAYTHEON COMPANY BASED ON BOOK VALUE

($ in 000's)

		Guaranteed Loans				
Year	*Investment*	*Principal*	*Interest*	*Accounts Receivable*	*Legal Expenses*	*Total*
1956	$131.2					131.2
1959	397.3					397.3
1961	542.4					542.4
1962	3137.8					3137.8
1964	3202.4					3202.4
1967	4488.2					4488.2
1968	− 625.6	0.0	0.0	0.0	0.0	− 625.6
Total	$11273.7	0.0	0.0	0.0	0.0	11273.7

Note. 391 million lire shown on Schedule DD converts to $625,600 shown above in 1968.

Schedule H1

RAYTHEON ELSI, COMPUTATION OF DAMAGES TO RAYTHEON BASED ON ESTIMATED MINIMUM LIQUIDATION VALUES

($ in 000's)

	Actual Loss	*Anticipated Loss*	*Damages*
Investment	11899.3	11899.3	0.0
Guaranteed Loans	8282.8	4583.0	3699.8
Interest on Guaranteed Loans	1000.8	486.9	513.9
Receivables Due Raytheon Company	1830.0	1012.7	817.3
Legal Expenses	939.8	0.0	939.8
Total Excluding Interest	23952.7	17981.9	5970.8
Interest			23591.3
Total			29562.1

Schedule H2

RAYTHEON ELSI, COMPUTATION OF DAMAGES TO RAYTHEON BASED ON ESTIMATED MINIMUM LIQUIDATION VALUES

($ in 000's)

Year	*Actual Loss*	*Anticipated Loss*	*Difference*	*Beginning Balance*	*Interest* *Rate*	*Interest* *Amount*	*Ending Balance*
1956	131.2	131.2	0.0	0.0		0.0	0.0
1959	397.3	397.3	0.0	0.0		0.0	0.0
1961	542.4	542.4	0.0	0.0		0.0	0.0
1962	3137.8	3137.8	0.0	0.0		0.0	0.0
1964	3202.4	3202.4	0.0	0.0		0.0	0.0
1967	4488.2	4488.2	0.0	0.0		0.0	0.0
1968	10749.2	6082.6	4666.6	0.0		0.0	4666.6
1969	63.7		63.7	4666.6	7.96%	371.5	5101.8
1970	433.0		433.0	5101.8	7.69%	392.3	5927.1
1971	47.4		47.4	5927.1	5.73%	339.6	6314.1
1972	34.9		34.9	6314.1	5.28%	333.4	6682.4
1973	0		0.0	6682.4	8.07%	539.3	7221.7
1974	0		0.0	7221.7	10.80%	779.9	8001.6
1975	2.4		2.4	8001.6	7.88%	630.5	8634.5
1976	67.9		67.9	8634.5	6.84%	590.6	9293.0
1977	10.5		10.5	9293.0	6.73%	625.4	9928.9
1978	159.1		159.1	9928.9	9.06%	899.6	10987.6
1979	23.7		23.7	10987.6	12.67%	1392.1	12403.4
1980	145.0		145.0	12403.4	15.16%	1880.4	14428.8
1981	87.1		87.1	14428.8	18.85%	2719.8	17235.7
1982	52.2		52.2	17235.7	14.84%	2557.8	19845.7
1983	111.8		111.8	19845.7	10.79%	2141.4	22098.9
1984	27.3		27.3	22098.9	12.05%	2662.9	24789.1
1985	38.2		38.2	24789.1	9.93%	2461.6	27288.9
1986			0.0	27288.9	8.33%	2273.2	29562.1
Total	23952.7	17981.9	5970.8			23591.3	29562.1

Schedule H3

RAYTHEON ELSI, ACTUAL LOSS SUSTAINED BY RAYTHEON COMPANY

($ in 000's)

		Guaranteed Loans				
Year	*Investment*	*Principal*	*Interest*	*Accounts Receivable*	*Legal Expenses*	*Total*
1956	131.2					131.2
1959	397.3					397.3
1961	542.4					542.4
1962	3137.8					3137.8
1964	3202.4					3202.4
1967	4488.2					4488.2
1968		8075.8	821.5	1830.0	21.9	10749.2
1969					63.7	63.7
1970		207.0	179.3		46.7	433.0
1971					47.4	47.4
1972					34.9	34.9
1975					2.4	2.4
1976					67.9	67.9
1977					10.5	10.5
1978					159.1	159.1
1979					23.7	23.7
1980					145.0	145.0
1981					87.1	87.1
1982					52.2	52.2
1983					111.8	111.8
1984					27.3	27.3
1985					38.2	38.2
Total	11899.3	8282.8	1000.8	1830.0	939.8	23952.7

Schedule H4

RAYTHEON ELSI, ANTICIPATED LOSS BY RAYTHEON COMPANY BASED ON ESTIMATED MINIMUM LIQUIDATION VALUES

($ in 000's)

		Guaranteed Loans				
Year	*Investment*	*Principal*	*Interest*	*Accounts Receivable*	*Legal Expenses*	*Total*
1956	131.2					131.2
1959	397.3					397.3
1961	542.4					542.4
1962	3137.8					3137.8
1964	3202.4					3202.4
1967	4488.2					4488.2
1968		4583.0	486.9	1012.7		6082.6
Total	11899.3	4583.0	486.9	1012.7	0.0	17981.9

Schedule 11

RAYTHEON ELSI, ACTUAL PAYMENT OF GUARANTEED LOANS BY RAYTHEON COMPANY

(Dollars in Thousands — Lire in Millions)

		Principal		*Interest*		*Total*	
	Date	*Dollars*	*Lire*	*Dollars*	*Lire*	*Dollars*	*Lire*
Banco di Sicilia	8/68	1207.5	750.0	7.0	4.3	1214.5	754.3
First National City Bank	8/68	229.7	142.7	7.3	4.5	237.0	147.2
Banca Nazionale del Lavoro	10/68	1828.6	1140.0	121.7	76.0	1950.3	1216.0
Banca Nazionale del Lavoro	10/68	1604.0	1000.0	108.3	67.6	1712.3	1067.6
Banca Commerciale Italiana	12/68	2404.5	1500.0	253.0	157.7	2657.5	1657.7
Banca Commerciale Italiana	12/68	801.5	500.0	324.2	202.2	1125.7	702.2
Banco di Roma	3/70	207.0	130.0	179.3	112.6	386.3	242.6
Total		8282.8	5162.7	1000.8	624.9	9283.6	5787.6

Schedule 12

RAYTHEON ELSI, ANTICIPATED PAYMENT OF GUARANTEED LOANS BY RAYTHEON COMPANY BASED ON ESTIMATED MINIMUM LIQUIDATION VALUES

(Dollars in Thousands — Lire in Millions)

		Principal (1)		*Interest (1)*		*Total (1)*	
	Date	*Dollars*	*Lire*	*Dollars*	*Lire*	*Dollars*	*Lire*
Banco di Sicilia	8/68	668.2	415.0	3.9	2.4	672.1	417.4
First National City Bank	8/68	127.1	79.0	4.1	2.5	131.2	81.5
Banca Nazionale del Lavoro	10/68	1011.3	630.9	67.5	42.1	1078.8	673.0
Banca Nazionale del Lavoro	10/68	887.0	553.4	60.0	37.4	947.0	590.8
Banca Commerciale Italiana	12/68	1330.6	830.0	139.9	87.3	1470.5	917.3
Banca Commerciale Italiana	12/68	443.6	276.7	179.2	111.8	622.8	388.5
Banco di Roma	12/68	115.2	71.9	32.3	20.2	147.5	92.1
Total		4583.0	2856.9	486.9	303.7	5069.9	3160.6

Schedule J

RAYTHEON ELSI, ACCOUNTS RECEIVABLE WRITE-OFF BY RAYTHEON COMPANY AND RAYTHEON SERVICE COMPANY BASED ON ESTIMATED MINIMUM LIQUIDATION VALUES

(Dollars in Thousands — Lire in Millions)

	Actual Writeoff (100%)		*Proceeds from Assets*		*Anticipated Writeoff (55.3%)*	
	Lire	*Dollars*	*Lire*	*Dollars*	*Lire*	*Dollars*
Raytheon Company	799.2	1278.7	356.9	571.0	442.3	707.7
Raytheon Service Company	344.6	551.3	153.9	246.3	190.7	305.0
Total	1143.8	1830.0	510.8	817.3	633.0	1012.7

Schedule K

RAYTHEON-ELSI CLAIM, LEGAL EXPENSES

(Stated in Whole Dollars)

Year	*Studio Legale Bisconti*	*Studio Legale Colomia*	*Studio del Prof. Fazzalari*	*Studio Legale Roccelle*	*Professor La Pergola*	*Professor Colletti*	*Professor Cusimano*	*Studio Legale Ciccotti*	*Total in Italy*	*Total in USA*	*Total*
1968	21850	0	0	0	0	0	0	0	21850	0	21850
1969	53119	2649	8000	0	0	0	0	0	63768	0	63768
1970	35947	2489	7040	480	0	0	0	0	45956	721	46677
1971	16642	860	14400	0	1120	0	0	7608	40630	6750	47380
1972	19314	2638	9901	513	0	0	0	0	32366	2511	34877
1973	0	0	0	0	0	0	0	0	0	0	0
1974	0	0	0	0	0	0	0	0	0	0	0
1975	0	1000	1470	0	0	0	0	0	2470	0	2470
1976	60780	4395	1200	0	0	0	1500	0	67875	0	67875
1977	0	1682	5800	0	0	3000	0	0	10482	0	10482
1978	95700	2751	20000	7178	0	20000	13500	0	159129	0	159129
1979	0	5700	0	7055	0	11000	0	0	23755	0	23755
1980	83060	2731	26000	12331	0	0	0	20855	144977	0	144977
1981	39054	1469	22000	10937	0	0	0	13640	87100	0	87100
1982	35183	1987	15000	0	0	0	0	0	52170	0	52170
1983	64830	564	22000	10304	0	0	0	14124	111822	0	111822
1984	19845	647	0	0	0	0	0	6809	27301	0	27301
1985	0	0	25000	3720	0	0	0	9450	38170	0	38170
1986	0	0	0	0	0	0	0	0	0	0	0
Total	545324	31562	177811	52518	1120	34000	15000	72486	929821	9982	939803

Annex 14

Affidavit of Herbert Deitcher, Vice-President and Treasurer, Raytheon Company, Dated 6 January 1987

I, Herbert Deitcher, personally appeared before Neal E. Minahan, a notary public in and for the Commonwealth of Massachusetts, on 6 January 1987, and, upon being duly sworn, stated that:

1. My name is Herbert Deitcher. I am Vice-President and Treasurer of Raytheon Company ("Raytheon"). I have worked continuously in Raytheon's Office of the Treasurer since July 1958 and am making this affidavit entirely from personal knowledge.

2. Raytheon, during its involvement with the Italian corporation, Elettronica Sicula ("ELSI"), was called upon from time to time to replenish ELSI's capital in order to keep the company in operation. In doing so, since the other shareholders were unwilling to contribute to ELSI's capital, Raytheon invested a total of $11,845,199 in ELSI between 1956 and 1967, successively increasing its ownership interest in that company. By April 1967, Raytheon had made investments of sufficient capital funds to acquire approximately 99 per cent of ELSI's stock. Machlett Laboratories, Inc., owned the remainder of ELSI's stock, representing an investment of $54,124. An accurate statement of Raytheon's and Machlett's investment history in ELSI is attached hereto as Exhibit A. As reflected in this Exhibit, Raytheon made its final substantial capital investment into ELSI in 1967, infusing $4,007,148 as a direct capital contribution to ELSI and $426,932 to La Centrale to purchase a portion of their ownership interest, and, in addition, guaranteed approximately $2,500,000 in additional loans made to ELSI by Italian banks.

3. By early 1968, it appeared that, as a result of the lack of support to ELSI from the Italian Government, both promised and inferred, Raytheon's efforts alone to continue ELSI as a viable operational company were not going to be successful.

Accordingly, we developed a plan to liquidate ELSI's assets in an orderly manner, to minimize our losses and satisfy ELSI's creditors. To ensure that our orderly liquidation could be carried out, we opened a line of credit in Citibank Milan. The seizure of ELSI's assets by the Italian Government on 1 April 1968 (the "requisition"), disrupted our plan to liquidate ELSI and satisfy its debts in an orderly manner. Nonetheless, we used this line of credit to pay approximately $259,000 to a number of ELSI's small creditors before ELSI was forced by the requisition to declare bankruptcy.

4. Raytheon had guaranteed a major portion of ELSI's unsecured lire debt, having an equivalent total of $8,282,811. Raytheon paid each of these guaranteed lire debts in full on demand from the lenders, including interest payments and related charges in lire, having an equivalent total value of $9,283,610. Attached hereto as Exhibit B is an accurate list of the lenders to whom we paid the guarantees, the dates we paid these debts, and the amount we paid in each case. The US dollar amounts shown are the actual amounts paid by Raytheon at the time in order to purchase the corresponding amounts of lire.

5. Raytheon and its wholly owned subsidary, Raytheon Service Company, had provided goods and services to ELSI on unsecured open account terms. Ray-

theon's open accounts due from ELSI totaled $1,278,658.49. RSC's open accounts due from ELSI totaled $551,347.31, for a combined total of $1,830,005.80 owed by ELSI. Attached hereto as Exhibit C are accurate statements of the amounts due Raytheon and RSC by ELSI as of the date of the requisition. Among the debts owed to Raytheon is a debt owed by Societa Electroniche Italiano ("SELIT"); ELSI had assumed that debt to Raytheon when ELSI and SELIT merged in 1964. Raytheon and RSC have not received any payment for these accounts.

(*Signed*) Herbert DEITCHER.

Commonwealth of Massachusetts.
County of Middlesex.

Subscribed and sworn to by me this 6th day of January 1987.

(*Signed*) Neal E. MINAHAN.
Notary Public.

Exhibit A

RAYTHEON-ELSI, S.P.A., RAYTHEON AND MACHLETT'S INVESTMENT HISTORY

		Total Capitalization		*Raytheon Ownership*		*Cumulative Treatment of Investment Account*				
Date	*Action*	*No. of Shares*	*Dollar** *Equivalent*	*%*	*No. of Shares*	*Advances*	*Gross Investment*	*Increase (Decrease) from Earnings*	*(Decrease) from Amortization*	*Net Investment*
1956										
May 1956	Original investment of $131,148 which came about as Settlement of amounts owed by FIRAR as follows:									
	Know How (7/1/53 to 7/1/55)						$ 90,000			
	Royalties (7/1/54 to 9/30/55)						16,196			
	Interest at 6% on above						9,952			
							116,148			
	and cash investment						15,000			
	Total (La Centrale 66%, Sofi 20%)	750,000C	805,000	14%	105,000C		$ 131,148			131,148
1959										
June 1959	Additional cash investment of $113,120 to maintain % ownership upon increase in capitalization from 750,000 shares of Common to 750,000 shares of Common and 500,000 shares of Preferred	750,000C 500,000P	1,615,000	14%	105,000C 70,000P		$ 244,268			244,268
Oct. 1959	Additional cash investment of $284,240 to increase ownership to 30%. La Centrale purchased all of Sofi's shares and in turn sold 120,000 shares of Common and 80,000 shares of Preferred to Raytheon									
	(Note: From this point forward, sole partner is La Centrale.)	no change	1,615,000	30%	225,000C 150,000P		$ 528,508			528,508

	Reduction in capital from 1,250 million lire (and 1,250,000 shares) to 1,000 million lire and 500,000 Common shares and 500,000 Preferred shares	500,000C 500,000P		30%	150,000C 150,000P			
	Then, all shares converted to Common	1,000,000C	1,615,000	30%	300,000C			
1961								
Aug. 1961	Temporary advance of $305,714 in lieu of investment to increase Raytheon ownership by 19%, per Raytheon-La Centrale Letter Agreement dated June 14, 1961. The use of an advance postponed application of the Italian Foreign Investment Loan until a scheduled December 31, 1962	no change	no change	49%	490,000C	305,714	628,508	934,222
	190,000 Common Shares held by La Centrale for Raytheon until December 31, 1962	no change	no change	n.c.	no change			
Nov. 1961	Additional cash investment of $44,904 for partial payment (3/10) of 30% share of 1 billion lire — 1 million share increase in ELSI capitalization	2,000,000	3,250,000			305,714	673,412	979,126
	Temporary advance of $91,773 in lieu of investment for 19% share of 1 billion lire — 1 million share increase in ELSI capitalization — made in partial (3/10) value of total transaction	no change	no change	49% n.c.	980,000 no change	397,487	673,412	1,070,899
1962								
June 1962	Temporary advance of $553,602 in lieu of investment representing previously withheld 7/10 portion of 30% — 19% shares of 1 billion lire — 1 million share increase in ELSI capitalization	no change	no change	n.c.	no change	951,089	673,412	1,624,501
Dec. 1962	Temporary advance of $2,584,193 in lieu of investment for 11% ownership increase by Raytheon via purchase of share from La Centrale and 60% share of 2.3 billion lire							

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		Total Capitalization		*Raytheon Ownership*		*Cumulative Treatment of Investment Account*				
Date	*Action*	*No. of Shares*	*Dollar(a) Equivalent*	*%*	*No. of Shares*	*Advances*	*Gross Investment*	*Increase (Decrease) from Earnings*	*(Decrease) from Amortization*	*Net Investment*
	2.3 million share increase in ELSI capitalization (Includes transfer of Genetron ownership from Raytheon to La Centrale)	4,300,000	6,950,000	60%	2,580,000(c)	3,535,282	673,412			4,208,694
1963										
March 1963	Initial recording of operating results and amortization					3,535,282	673,412	(79,430)	(141,110)	3,988,154
May 1963	Transfer of Advance to Investment category	no change	no change	n.c.	no change	0	4,208,694	(79,430)	(141,110)	3,988,154
June 1963	Record operating results and amortization						4,208,694	(332,659)	(278,538)	3,597,497
Sept. 1963	Record operating results and amortization						4,208,694	(527,110)	(417,807)	3,263,717
Dec. 1963	Record operating results and amortization						4,208,694	(740,668)	(553,558)	2,914,468
1964										
March 1964	Record operating results and amortization						4,208,694	(866,057)	(691,947)	2,650,690
May 1964	Temporary advance of $1,920,215 in lieu of investment for 60% shares of 2.0 billion lire increase in Raytheon-ELSI S.p.A. capitalization. Share structure not determined pending devaluation	see below	see below	60%	2,580,000(c)	1,920,215	4,208,694			
June 1964	Temporary advance of $1,288,000 in lieu of investment for remaining 40% of 2 billion lire capital increase (partner declined). Share structure not determined pending devaluation	see below	see below	60%	2,580,000(c)	1,202,425	4,208,694			

June 1964	Record operating results and amortization					3,202,425	4,208,694	(799,438)	(830,366)	5,781,315
July– Sept. 1964	Revaluation — 4.3 billion lire and 4.3 million shares reduced to 2.0 billion lire and 2.0 million shares	4,300,000 (2,300,000) 2,000,000CA	3,230,000	60% 60%	2,580,000 (1,380,000) 1,200,000	3,202,425	4,208,694			
	Raytheon ownership confirmed for additional 40% of June 1964 capital increase	2,000,000CB 4,000,000CA &CB	6,460,000	100% 80%	2,000,000 3,200,000	3,202,425	4,208,694			
Sept. 1964	Record operating results and amortization					3,202,425	4,208,694	(771,536)	(968,725)	5,670,859
Dec. 1964	Transfer of Advance to investment category	no change	no change	n.s.	no change	0	7,411,119			
	Record operating results and amortization						7,411,119	(546,022)	(1,167,341)	5,697,756
1965										
March 1965	Record operating results and amortization						7,411,119	(398,863)	(1,290,811)	5,721,445
June 1965	Record operating results and amortization						7,411,119	(439,820)	(1,414,280)	5,557,019
Sept. 1965	Record operating results and amortization						7,411,119	(569,797)	(1,537,747)	5,303,575
Dec. 1965	Record operating results and amortization						7,411,119	(1,385,122)	(1,661,219)	4,364,778
1966										
March 1966	Record operating results and amortization						7,411,119	(1,362,125)	(1,784,691)	4,264,303
June 1966	Record operating results and amortization						7,411,119	(1,503,082)	(1,908,161)	3,999,876
Sept. 1966	Record operating results and amortization						7,411,119	(1,960,966)	(2,035,506)	3,414,647
Dec. 1966	Record operating results and amortization						7,411,119	(2,667,820)	(2,162,851)	2,580,448

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		Total Capitalization		Raytheon Ownership		Cumulative Treatment of Investment Account				
Date	*Action*	*No. of Shares*	*Dollar[a] Equivalent*	*%*	*No. of Shares*	*Advances*	*Gross Investment*	*Increase (Decrease) from Earnings*	*(Decrease) from Amortization*	*Net Investment*
1967										
March 1967	Record operating results and amortization						7,411,119	(3,338,239)	(2,290,196)	1,782,684
June 1967	Revaluation — 2,000,000 Class A and 2,000,000 Class B shares devalued from 1,000 lire each to 375 lire each (Memo: Machlett purchases 90,000 shares of devalued Class A)	no change	2,420,000	n.s.	no change					no change
	Recapitalization — 2,000,000 Class A and 2,000,000 Class B common recapitalized to 1,000 lire each; temporary advance in lieu of formal investment in amount of $4,007,148	no change	6,460,000	n.s.	no change	4,007,148	7,411,119	no change	no change	5,789,832
	Temporary advance of $481,056 in lieu of investment to acquire remaining 20% ownership held by La Centrale	no change	no change	100%[b]	4,000,000	481,056 4,488,204	7,411,119	(4,964,528)	(2,417,541)	4,517,254
	(Memo: Machlett exchanges 90,000 devalued Class A for 33,750 recapitalized Class A)									
Sept. 1967	Record operating results and amortization						11,899,323	(5,912,156)	(2,572,664)	3,414,503
Dec. 1967	Record operating results and amortization						11,899,323	(7,117,696)	(2,727,787)	2,053,840
1968										
March 1968	Record operating results and amortization						[d]11,899,323	[c](7,764,476)	(2,882,910)	1,251,937

[a] Converted at 1.615 dollars per 1,000 lire.

[b] Including Machlett's ownership of 0.84%.

[c] Converted at 1.615 dollars per 1,000 lire. In September 1967 the investment account was recalculated at 1.600 dollars per 1,000 lire.

[d] Approximately 7.44 billion lire converted at 1.600 dollars per 1,000 lire.

[e] Raytheon portion is $11,845,199 (Balance of $54,124 is Machlett).

Exhibit B

ELSI GUARANTEED LOANS PAID BY RAYTHEON COMPANY

Bank	*Date paid*	*Guarantee Number*	*Lire Amounts*		*Total Paid** in U.S. Dollars*
			Principal	*Interest**	
Banco di Sicilia	August 26 1968	108	750,000,000	4,253,425	1,214,538
1st National City Bank, Milan	August 26 1968	211	142,698,638	4,514,783	236,982
Banca Nazionale del Lavoro	October 21 1968	145 200	1,140,000,000 1,000,000,000	76,035,807 67,586,650	1,950,339 1,712,247
Banca Commerciale Italiana	December 31 1968	K 207	1,500,000,000 500,000,000	157,715,322 202,240,174	2,657,447 1,125,746
Banco di Roma	March 18 1969	206	130,000,000	112,594,802	386,311
Total			L. 5,162,698,638	624,940,963	$9,283,610

* Includes commissions paid and general turnover tax, where applicable.

** Reflects actual dollar cost.

Exhibit C

RAYTHEON COMPANY, ACCOUNT RECEIVABLE DUE FROM RAYTHEON-ELSI

Invoice No.	*Transaction*	*Amount*	*Balance*
CC65217	Corporate Special Purchases	$10,576.22	
CC65218	Western Electric Royalty	59,045.18	
CC55229	Interest on Guaranteed Bank Loan	42,833.71	
CC65230	Nato-Hawk Components	28,650.66	
CC65234	Trade Accounts	566,999.82	
CC65235	Commissions	(5,753.78)	
CC65736	Royalty Account	440,613.71	
CC65237	Management Fee	91,351.62	
CC65246	Accounts Receivable Other	6,656.23	$1,240,973.37
	Industrial Tubes and Other Items Sold to SELIT (Societa Electroniche Italiano)		37,635.12
			$1,278,658.49

RAYTHEON SERVICE COMPANY, LEXINGTON DIVISION

12 June 1968.

Raytheon-ELSI, S.p.A.
Via Villagrazia 79
Casella Postale 288
Palermo, Italy

Gentlemen:

Following is an itemized statement of your account as of May 26, 1968:

Raytheon Service Company — European Management Branch.
Management Fee

Date	*Invoice No.*	*Amount*
3/3/64	3-2	$9,000.00
3/3/64	3-6	7,130.00
3/17/64	3-19	7,544.00
4/16/64	4-25	9,467.00
5/14/64	5-2	7,802.00
6/15/64	6-2	7,786.00
7/20/64	7-7	9,397.00
8/11/64	8-8	8,842.00
9/21/64	9-8	9,103.00
10/23/64	10-8	12,379.00
11/20/64	11-10	15,251.00
12/23/64	12-9	9,585.00
1/29/65	1-9	14,021.00
2/26/65	65/2-7	(5,867.00)
3/25/65	65/3-4	11,100.00
4/28/65	65/4-1	8,776.00
5/27/65	65/5-8	8,278.00
6/22/65	65/6	9,943.00
7/30/65	65/7-2	5,491.00
8/20/65	65/8-7	6,000.00
9/24/65	65/9-2	13,920.00
10/29/65	65/10-8	10,000.00
11/24/65	65/11-4	10,000.00
12/28/65	65/12-8	(7,950.00)
12/28/65	65/12-9	6,000.00
1/26/66	66/1-5	10,000.00
2/23/66	66/2-6	8,800.00
3/29/66	66/3-8	8,320.00
4/26/66	66/4-4	8,800.00
5/25/66	66/5-4	11,040.00
6/16/66	66/6-1	12,000.00
7/22/66	66/7-1	12,000.00
8/15/66	66/8-1	$10,000.00
9/26/66	66/9-8	4,400.00
11/11/66	66/11-1	(20,048.56)
12/15/67	94-12-4	109,926.80

Date	*Invoice No.*	*Amount*
5/16/68	94-5-58	30,915.00
5/16/68	94-5-78	21,250.00
Total Management Fee		$430,401.24
Specialists Billings		
2/3/64	2-2	$6,094.02
2/21/64	2-10	5,490.79
3/17/64	3-10	4,899.53
4/16/64	4-29	6,385.94
5/15/64	5-6	6,359.09
6/17/64	6-6	558.86
7/2/64	7-2	2,286.25
8/11/64	8-2	2,286.25
9/16/64	9-2	8,982.43
7/2/65	65/6-12	534.78
8/20/65	65/8-11	14,550.00
8/20/65	65/8-10	22,800.00
12/21/65	65/12-2	6,911.69
12/21/65	65/12-1	2,778.79
3/21/66	66/3-1	5,513.14
6/21/66	66/6-8	5,378.86
9/23/66	66/9-5	5,953.50
12/21/66	66/12-1	6,056.05
3/27/67	67/3-3	5,966.02
6/28/67	94-6-7	5,964.66
9/18/67	94-9-4	4,145.57
10/15/67	94-10-2	2,623.05
11/15/67	94-11-3	1,846.65
12/15/67	94-12-3	1,846.65
1/15/68	94-1-18	1,846.65
5/16/68	94-5-48	5,703.69
Total Specialists Billings		$143,762.91
Special Purchasing Agreement		
12/15/66	94-12-3	$4,500.00
Credit Billings		
3/1/65	718/COG/CO1	$ (36,983.55)
5/18/65	1201/COG/CO1	(3,178.15)
7/20/67	COG/2	(128.00)
5/30/67	COG/1	(160.00)
10/31/67	Wagon-Lits	(2,393.55)
Total Credit Billings		$ (42,843.25)
Balance of Account with Raytheon Service Company — European Management Branch 5/26/68		$535,820.90

Raytheon Service Company — Electronic Services

Trade Account

Date	*Invoice No.*	*Amount*
1/7/67	19942	$30.24
2/3/67	20015	92.76
Total Trade Account		$123.00
Commission Account		
2/6/68	7690	$(12.38)
Magnetron Account		
11/29/62	29990	$4,720.00
2/28/63	30071	2,537.00
4/28/65	30753	3,363.00
5/19/65	30758	2,832.00
9/20/65	30818	5,310.00
1/21/66	30982	2,714.00
3/28/66	31076	3,127.00
11/21/66	32140	5,538.00
11/21/66	32141	142.79
10/4/67	2007	(14,868.00)
Total Magnetron Account		$15,415.79

Annex 15

AFFIDAVIT OF JOHN D. CLARE, FORMER CHAIRMAN, RAYTHEON EUROPE INTERNATIONAL COMPANY, DATED 10 JANUARY 1987

I, John D. Clare, appeared before a notary public and, after being duly sworn, stated as follows:

1. In 1940, I graduated from the University of Birmingham in the United Kingdom with an honors degree in electrical engineering. Shortly thereafter, I joined the General Electric Company in the United Kingdom as a graduate apprentice.

2. Approximately two years later, in 1942, I received a masters degree in electrical engineering from the University of Birmingham and commenced working in the field of telecommunications at the General Electric Company.

3. In 1945, after five years with General Electric, including assignment as project director responsible for the development of an open wire, multi-channel carrier transmission system, I joined Sobell Industries, Ltd. Two years later, during 1947, I became Sobell's Chief Engineer, responsible for the design and costing of commercial radios and televisions, as well as for the industrial engineering, inspection and test on the manufacturing lines.

4. In 1950, after five years with Sobell, I joined the Radar Research Establishment of the United Kingdom's Ministry of Aviation where, as Superintendent of Guidance Systems, I had technical responsibility for development of various radar and guidance systems built in United Kingdom Industry and personal responsibility for the development of "continuous wave" radar and missile systems. As a result of my work on continuous wave radar and missile systems, the fundamental patents obtained for these systems were in my name.

5. During 1960, I moved to the Headquarters of the Ministry of Aviation to become Director of Guided Weapons Research and Development. As Director, I was responsible for all defensive missile systems for the Army and Air Force and for co-operative development of such systems with the United Kingdom's Nato allies. While serving as Director at the Ministry, I started the first successful Anglo-French missile project, "Martel", an air to surface missile system which continues to be operational.

6. In 1962, after 12 years with the Ministry, I joined ITT. Initially, ITT appointed me as its Managing Director of Research Laboratories in the United Kingdom. Later, I became Associate Technical Director of ITT-Worldwide, and Vice-President and Technical Director of ITT-Europe. During my tenure at ITT, I was responsible for all research and development projects in 15 European countries relating to numerous fields, including data transmission systems, public and private telephone switching systems, line and microwave transmission systems, car radios, televisions, cables, industrial controls, heating and ventilation system controls, and consumer products.

7. In 1966, I left ITT to become a Vice-President of Raytheon Company and the President Designate of Raytheon Europe International Company ("Raytheon-Europe"), a division of Raytheon Company ("Raytheon").

8. The principal objective of Raytheon-Europe was to furnish European companies, which were majority owned or controlled by Raytheon, with technical,

managerial, and other assistance necessary for them to become strong, profitable enterprises.

9. During 1966-1967, Raytheon possessed majority ownership or control of nine European companies, which were located in the United Kingdom, France, Switzerland, Denmark and Italy. One of these companies was Elettronica Sicula S.p.A. ("ELSI"), a manufacturer of electronic equipment based in Palermo, Sicily, Italy.

10. While the workforce in Palermo, Italy, had little or no experience with the manufacture of sophisticated products prior to the establishment of ELSI in 1954, ELSI was a respected producer of high-quality electronic products in 1966 with: sales from 110 to 1,257 million lire per country in Germany, Spain, United States, France, Switzerland, Yugoslavia, Japan, Benelux countries and Sweden; lesser sales in other countries; and repeated sales to Nato.

11. At its Palermo plant, which covered approximately 48,500 square metres, ELSI produced: (1) microwave tubes, which generated high-frequency electromagnetic waves based upon technological capability furnished by Raytheon, for NATO Hawk missile systems, as well as for more general use in telecommunications, military and civilian radars, and industrial microwave heating; (2) cathode ray tubes, the most complex component in televisions; (3) semiconductors, including rectifiers, which converted alternating current to direct current in X-ray equipment, radio and television stations, electrostatic filters, and domestic appliances; (4) a variety of X-ray tubes for medical uses; and (5) surge arresters, which protected equipment and employees against overvoltages transmitted by telephone and other lines.

12. During fiscal years 1964 through 1966, however, ELSI operated at a loss, that is, profits from sales were not sufficient to offset debt expense and accumulated losses.

13. Because ELSI's accumulated losses had been increasing, Raytheon embarked upon a major effort in fiscal year 1967 to determine the reasons for these losses and reverse this financial trend.

14. As part of that effort, I became ELSI's Chairman of the Board in February 1967. In addition, Messrs. Rinaldo Bianchi and Joseph Scopilleti, Counsel and Controller of Raytheon-Europe, respectively, became Directors of ELSI.

15. After our appointment as senior management of ELSI, we discovered that ELSI's plant and labour capacity were in excess of production, but inefficient operation currently absorbed that excess capacity. We, therefore, determined that if ELSI's operations were made more efficient as planned, ELSI had to develop additional sales or reduce the number of its employees to absorb excess capacity. We further determined that, because a significant portion of ELSI's sales were either periodic, for example, Hawk tubes, or small volumes of highly specialized products, for example, surge arresters, diversification into new product lines would be necessary to generate sales sufficient to absorb excess capacity.

16. Because of the latter determination, we prepared lists of new product lines which could be (1) developed by ELSI, (2) furnished by Raytheon, along with supporting know-how, or (3) provided by Italian government agencies, particularly the Istituto per la Ricostruzione Industriale ("IRI"), on a subcontract basis.

17. Among the new products which we believed could be introduced at ELSI were subscriber head sets, relays, electromechanical assemblies, multiplex and microwave link transmission systems, switching subracks, and other telephone equipment, which is purchased primarily by government-owned organizations.

18. After thoroughly reviewing ELSI's products and other aspects of operations, including production, sales, markets, and finances, we concluded that, while ELSI's accumulated losses had been increasing, ELSI could become a successful

profitable enterprise with the addition of an Italian partner, infusion of capital, and introduction of new products.

19. We also concluded that, because of ELSI's location and resulting high transportation costs, ELSI should continue to seek the transport subsidies and other benefits available under Italian law for companies located in the Mezzogiorno Region. It was obvious that transportation subsidies would greatly assist ELSI because the company purchased bulky glass tubes from manufacturers in France, transported those tubes to Palermo for processing into television picture tubes, and then shipped finished picture tubes to northern Italy or other countries for sale.

20. We summarized our conclusions regarding ELSI in a 61-page report, which was distributed to senior officials of the Italian Government, the Sicilian Government, IRI, Italian banks, and other members of the Italian establishment.

21. In April of 1967, Raytheon contributed additional capital of over 4 million dollars and furnished 2.5 million dollars in guarantees which we believed would be sufficient for ELSI to continue operations during the next 12 months. Raytheon, however, expressly advised all concerned that it would be unable to furnish any additional capital contributions because of its already sizeable investment in ELSI. Accordingly, everyone understood that, unless our efforts to find an Italian partner, obtain additional capital, and add new product lines were successful, Raytheon would have to conduct an orderly liquidation of ELSI.

22. Between May 1967 and April 1968, I and other officers of ELSI and Raytheon held some 70 meetings with Italian government and business officials to discuss ways the Government could assist or participate in the effort to save ELSI.

23. We met with the Ministers for each relevant Ministry at the national level, Sicilian officials, local politicians in Palermo, representatives of IRI, officers of Ente Siciliano per la Produzione Industriale ("ESPI"), the Sicilian governmental entity responsible for funding and promoting local development, and other political and business figures.

24. We concentrated especially on ESPI, which had a considerable amount of capital available for investment and whose mission was to support employment in Sicily. ESPI's President, the Hon. G. La Loggia, repeatedly indicated that he was very interested in investing in ELSI. Further, another official at ESPI stated that ESPI considered electronics one of the fundamental industries for its future plans and understood the urgency of the ELSI situation.

25. The general manager for the Ministry of Industry and Trade also showed great interest and enthusiasm for Raytheon's efforts to revitalize ELSI. He explained that our efforts came at a most propitious time since the Italian Government was in the process of planning a major promotion and participation in the electronics field. During our meetings, the general manager indicated that: (1) he would include requirements for products ELSI could supply in certain short-term plans he was preparing for state-owned railroads, shipbuilding works, and other operations; (2) he would advise ESPI to invest in ELSI without delay; and (3) he would favor ELSI's participation as a prominent partner in the national programme for the electronics industry.

26. When we met with the President of the Sicilian Region, the President advised us that: (1) he had discussed Sicily's selection as the principal area for expansion of the Italian electronics industry with officials of the national Government; (2) the interests of the Sicilian Region coincided with those of Raytheon since the Region's primary objective was to promote growth of the Italian electronics industry in Sicily with ELSI as a nucleus; (3) he would order immediately that ESPI invest in ELSI if he determined it would assist in obtaining

national support for the Sicilian electronics industry; and, (4) if his plan to obtain national support for centring future growth in electronics at Sicily did not succeed, Raytheon had his "broadest assurance that ESPI would promptly furnish ELSI with four billion lire".

27. Minutes of two of our meetings with the President of the Sicilian Region are appended to this affidavit as exhibits A and B. I have reviewed these minutes and they are an accurate statement of the events which transpired at the meetings.

28. In addition to discussing ELSI's requirement for an infusion of capital, new products, and an Italian partner, we discussed various laws, which were enacted to encourage investment in the Mezzogiorno Region, with each senior official we met. During these latter discussions, we emphasized the importance of receiving transport subsidies and benefits under the so-called "30 per cent law".

29. The "30 per cent law" required that the Italian Government make 30 per cent of its purchases from industries located in the Mezzogiorno Region. Thus, under this law, government-owned hospitals should have been purchasing at least 30 per cent of their X-ray tubes from ELSI, the only company located in the Mezzogiorno region which produced X-ray tubes, rather than continuing to purchase all such tubes from foreign companies.

30. When we met with the Undersecretary for the Ministry of Industry and Trade, he emphasized strongly that the Minister wished to apply the "30 per cent law" rigorously. Further, during another meeting, the Minister for the Ministry of Treasury advised us that freight subsidies would be available to ELSI from the "Fund for the South" for domestic or export shipments.

31. Representatives of IRI were the only Italian officials we met who appeared unsupportive of our plans. For example, at one of our meetings with IRI, which was attended by IRI's President, senior officials indicated that they viewed the development of ELSI as competition for IRI's own plans regarding electronics and that IRI's financial resources were stretched already, without entering into a partnership with ELSI. We then repeated our earlier proposal that ELSI be merged with Selenia, an electronics company in northern Italy jointly owned by IRI, Raytheon and Fiat, because such a merger would provide ELSI with subcontract work and a share of the Italian electronics plan, but IRI officials rejected the proposal. Finally, during this meeting, IRI officials even rejected our proposal to purchase IRI's share of Selenia and, thereby, alleviate IRI's problem of stretched financial resources. The President of IRI bluntly stated that shortage of funds really was not IRI's problem.

32. Accordingly, with the exception of our meetings with IRI officials, who showed no enthusiasm for our attempts to revitalize ELSI, our initial meetings with government and business officials led us to be optimistic regarding the prospects for ELSI's continuance as an on-going concern.

33. Since other senior ELSI officials and I were devoting our time to obtaining an Italian partner, additional capital, and new products for ELSI, we installed senior personnel from Raytheon-United States and Machelett Laboratories, Inc. ("Machlett"), at key points in the ELSI organization to infuse new technical and managerial techniques into the operation of the company and to assist in making the company as profitable as possible.

34. These personnel included John Stobo, co-manager of ELSI from March through November 1967, Justin Guidi, co-manager of ELSI from November 1967 through April 1968, Jack Mazzotti, director of administration and finance, Ricco Merluzzo, director of planning, Dom Nett, controller, Phil Puccia, assistant controller, Carmello Babagallo, director of cost and inventory systems, Royalle Allaire, director of manufacturing operations, Sherwood Cooke, director of engi-

neering, Mike Mandel, marketing consultant for microwave tubes, Peter Charman, marketing consultant for semiconductors, and Sid Standing, technical consultant for manufacturing tubes.

35. Besides lending key personnel, Raytheon placed at the disposal of ELSI its international sales organization, which promoted the sale of ELSI products with increasing success, and diligently searched for products whose manufacture could be transferred from its Massachusetts or Raytheon-Europe plants to ELSI's Palermo plant without violating American export security control laws. One example of these latter efforts was ELSI's production of microwave ovens during 1967.

36. Between July and December of 1967, senior personnel from Raytheon and Machlett completed numerous steps to improve ELSI's operations and facilities, including the performance of a comprehensive inventory of skills, implementation of quality and scrap control systems, establishment of a major training programme for employees, and reorganization of production facilities.

37. In late 1967, however, the tone of our meetings with government officials changed dramatically. For example, the President of ESPI qualified his enthusiasm for investing in ELSI by stating for the first time that a third partner would be necessary and indicating a clear preference for participation by IRI.

38. During this period, I heard rumours that IRI had a plan to permit ELSI to become bankrupt and purchase ELSI's assets very cheaply for one of its subsidiaries, STET. I also heard that IRI had decided to enter the electronics industry itself and, therefore, was unwilling to work with or assist ELSI. However, because the President of Sicily and others were seeking diligently to obtain participation by IRI and were very optimistic of so doing, I initially discounted such rumours.

39. While the Prefect of Palermo had advised us previously that IRI was interested in intervening in favour of ELSI by acquiring part of ELSI's shares, a senior IRI official informed us on 4 January 1968, that IRI was unable to make any decision regarding support for ELSI because it wished to study the Italian electronics industry for a year.

40. Minutes of our 4 January 1968 meeting with the senior IRI official are appended to this affidavit as exhibit C. These minutes were taken by Stanley Hillyer, my former assistant at ELSI who had fluent command of the Italian language and is now deceased. I have reviewed these minutes and they are an accurate statement of the events that transpired at the 4 January 1968, meeting.

41. Further, despite our repeated efforts during the prior nine months to have ELSI receive benefits under the incentive laws for companies located in the Mezzogiorno Region, ELSI never received any transport subsidies or government purchases pursuant to the 30 per cent law. In fact, the Ministry of Health furnished a circular to all provincial doctors indicating that the 30 per cent law was not applicable to purchases of X-ray tubes.

42. With no firm commitment for an Italian partner, infusion of capital, or new products, it appeared that Raytheon and Machlett would soon have no choice but to commence an orderly liquidation of ELSI because the financial statements being prepared for the fiscal year 1967 indicated that ELSI's losses had reached a point under Italian law where shareholders either would have to infuse additional capital or cease operations.

43. We therefore advised Italian government officials that, while we were willing to continue our discussions in January, February and March of 1968, ELSI would cease operation in the near future, without receipt of the necessary firm commitments.

44. On 20 February 1968, the President of Sicily reiterated his earlier commitment that ESPI and/or IRI would become partners in ELSI. He added that he hoped to obtain a commitment from the central Government to develop the electronics industry in Sicily within days and that this commitment would be equivalent politically to ensuring IRI assistance for ELSI.

45. By letter dated 21 February 1968, Charles Adams, Chairman of the Board of Raytheon and a participant in the 20 February 1968, meeting, thanked the President of Sicily for his efforts to assist ELSI and reiterated that Raytheon would not be able to furnish any additional capital to ELSI.

46. During February and March of 1968, it was evident that the Italian officials with whom we met were concerned about the political ramifications of ELSI ceasing operation in the near future. National elections were scheduled for May of 1968 and government officials repeatedly advised us that they did not want ELSI shut down and resulting large-scale unemployment in Sicily shortly before an election. We informed them that we understood this concern, but could not keep the plant in operation without firm commitments of support.

47. As a result of ELSI's financial situation and the lack of any firm commitments, ELSI's Board of Directors ("Board"), including myself as Chairman, met on 16 March 1968, and voted to liquidate the company. The Board further determined that, on 29 March 1968, ELSI would cease trading and dismiss all but 120 employees necessary for an orderly liquidation.

48. Minutes of the 16 March 1968 Board meeting are appended to this affidavit as Exhibit D. I have reviewed these minutes and they are an accurate statement of the events which transpired at the 16 March 1968 meeting.

49. During early 1968, Raytheon had taken the precaution of dispatching two of its senior officials, Vice-President Joseph Oppenheim, who is now deceased, and General Attorney Harold Oelbaum, to Palermo to finalize plans for and oversee an orderly liquidation in the event our efforts to obtain an Italian partner, infusion of capital, and new products were unsuccessful.

50. Under the liquidation plan which was finalized, ELSI would maintain a limited operation to complete work-in-progress and fill existing purchase orders, thereby preserving ELSI as an ongoing concern and making it more attractive to potential purchasers.

51. Further, since ELSI could receive a significant premium for some of its individual product lines, which were highly attractive to all major European tube manufacturers, including, Thompson, Phillips, and Siemens, ELSI would be offered for sale by product lines, as well as in its entirety. According to this sales plan, Raytheon and Machlett would grant purchasers of product lines all patents, licenses, customer lists, technical capability, and other assistance necessary for operation.

52. Based upon the liquidation plan, other members of senior management and I were confident that ELSI would realize enough money to settle all of its debts on a negotiated basis. During our meetings with representatives of Italian banks, that is, ELSI's large creditors, bank officials indicated that they would be willing to accept such a negotiated settlement because the settlement would furnish them with larger sums of money and that money would be paid more quickly, than in a bankruptcy.

53. Raytheon, therefore, established a $1.25 million line of credit at Citibank Milan to pay ELSI's small creditors and began making such payments in late March of 1968 to ensure an orderly liquidation. Raytheon also indicated that it would furnish any additional monies necessary to maintain the requisite cash flow for an orderly liquidation.

54. On 26 March 1968, three days before ELSI was to stop trading and dismiss the majority of its employees, the President of Sicily advised us that: we had a "big battle ahead" with IRI; in one or two years, we would "have an explosion of legal paper"; and, if Raytheon did not take care of IRI, IRI would "take care of Raytheon".

55. Minutes of our 26 March 1968, meeting with the President of Sicily are appended to this affidavit as Exhibit E. I have reviewed these minutes and they are an accurate statement of the events which transpired at the meeting.

56. One day later, the President of Sicily told us that, "if we proceeded with the sending out of the letters of dismissal, then the plant would almost certainly be requisitioned". The President added that, while he had given us his "broadest assurance" that ESPI would intervene to keep ELSI open, the Government was still considering possible plans for the future of ELSI and he could not make any definite commitments.

57. Minutes of our 27 March 1968 meeting with the President of Sicily are appended to this affidavit as Exhibit F. I have reviewed these minutes and they are an accurate statement of the events which transpired at the meeting.

58. On 29 March 1968, the date set by ELSI's Board of Directors for cessation of trading and dismissal of employees, I worked with other ELSI officers to prepare the dismissal letters. That night, at approximately 9 p.m., I received an urgent phone call from the General Manager of the Ministry of Industry and Trade asking me to meet with the Minister to discuss our decision to close ELSI. I went to the Ministry with Messrs. Oppenheim and Scopilleti, but the Minister was not available. The General Manager apologized for the Minister's absence and asked us to delay closing ELSI. He made it very clear that he was speaking for the highest levels of Government, particularly the Prime Minister. The General Manager added that closure of the plant prior to the election would lead to political problems in Sicily, which were unacceptable to the central Government, and we should keep ELSI open while plans were made for Government intervention. He indicated that, if we did not keep the plant open, we would incur the severe displeasure of the Prime Minister. The General Manager, however, would make no written commitment regarding any government assistance if we kept the plant open. Rather, he stated that, at that hour of the night, "we would have to take the word of the Prime Minister".

59. Minutes of our 29 March 1968 meeting with the General Manager are appended to this affidavit as Exhibit G. I have reviewed these minutes and they are an accurate statement of the events which transpired at the meeting.

60. When we returned to our office, I telephoned Thomas Phillips, President of Raytheon, to advise him of our meeting with the General Manager. Mr. Phillips told me that we should proceed to send the dismissal letters. Late that night, we mailed the letters.

61. On 31 March 1968, Aldo Profumo, ELSI's Managing Director, who is now deceased, reported that he had met with the President of Sicily, who stated that the Prime Minister had indicated an ESPI company would acquire ELSI's assets until an IRI subsidiary could be formed to own ELSI and that this route was easier for IRI because IRI would not have to collaborate with Raytheon. Further, according to Mr. Profumo, the President of Sicily indicated that ELSI's plant would be requisitioned to avoid an exodus of employees to other jobs and protect plant machinery.

62. Notes of the 31 March 1968 report by Mr. Profumo are appended to this affidavit as Exhibit H. I have reviewed these minutes and they accurately reflect Mr. Profumo's report.

63. The next day, 1 April 1968, the Mayor of Palermo requisitioned ELSI's plant and assets.

64. While I have not returned to ELSI since it was requisitioned by the Mayor of Palermo, I have learned that the plant is operated now by IRI and produces electromechanical assemblies and other telephone equipment, which were among the key new products listed in our 61-page report which could be introduced at ELSI.

(Signed) John D. CLARE.

State of California,
County of Santa Clara.

On the 10th day of January 1987, before me, G. R. Lagomarsino, the undersigned Notary Public, personally appeared John W. Clare, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he executed it. Witness my hand and official seal.

(Signed) G. R. LAGOMARSINO,
Notary Public.

Exhibit A

MEETING HELD IN PALERMO ON WEDNESDAY, 29 NOVEMBER 1967, FROM 6.15 P.M. TO 7.30 P.M. WITH THE PRESIDENT OF THE SICILIAN REGION

Present: Hon. Vincenzo Carollo, President of the Sicilian Region
Messrs. J. D. Clare, A. Profumo and R. L. Bianchi.

During the first part of the meeting Messrs. Clare and Profumo introduced the ELSI problems and gave a presentation of all actions taken since last April, both as regards operations and the continued search and negotiations for an Italian partner. The ELSI reports issued in May and July were illustrated for the President.

Mr. Carollo's first inquiry was whether ELSI's problem was not one of financial difficulties but only one of obtaining markets from government sources to exploit ELSI's production capacity. It was pointed out that there exist both a severe financial problem, and the problem of obtaining products to cover reliable markets from government sources. The President then remarked that a participation by ESPI alone could not solve ELSI's problem since ESPI could only contribute to the solution of the financial problem. He felt, therefore, that it was better to try to obtain a participation from IRI as well.

He revealed that he had been actively negotiating with the Central Government to promote the selection of Sicily as the main area for the expansion of the electronics industry in Italy. He told us that Italy is committed to develop a significant electronics industry and that he had conferred with Prime Minister Moro and even with the President of the Republic Mr. Saragat, as well as various Ministers and that memoranda have been written on the subject of locating such industry in Sicily. He said that, since his aim is to promote the growth of electronics in Sicily using ELSI as a nucleus, Raytheon's interests and the interests of the Sicilian Region coincide.

Mr. Clare indicated to Mr. Carollo that the Sicilian Government could be stronger in its efforts to persuade the National Government to place the electronics industry in Sicily, if it caused ESPI immediately to invest in ELSI so that Mr. Carollo could show that he has already made a start. Mr. Carollo said he would consider this suggestion. At the moment, however, he felt that the use of ESPI at this stage could cause the Government to feel less responsible for helping ELSI and the Sicilian Region in the field of electronics. He said that it cannot be overlooked that there are other regions in Italy which are competing for the choice of location for the development of the electronics industry. For example, he added, it is said that Minister Andreotti favors Lazio (the area around Rome). He then asked whether Raytheon would favor the broad national approach which he proposed to continue pursuing.

Mr. Clare said that there are three possibilities available:

(i) ESPI participation alone; this would immediately relieve the enormous financial pressure on ELSI and with this help the company could reach the breakeven point but expansion beyond such point would be extremely slow;

(ii) ESPI participation alone and a total effort to obtain the fullest application of existing laws, such as the 30 per cent law, the reduction of transportation costs, the grant of investment credits; this would help not only to reach breakeven point but profitability, since ELSI production would grow substantially and could be placed in guaranteed markets;

(iii) The effort to obtain not only ESPI but also an IRI participation, and the location in Sicily of the Italian major effort to create and develop a large electronics industry taking ELSI as a starting point.

The first two possibilities can be realized immediately, Mr. Clare pointed out. The third one will take a long time. This is the only reason why, Mr. Clare said, he hesitated before saying that he favored such a solution though, in the event of such a third solution, the possibilites for ELSI would be greater. Raytheon Company could then increase its technological contribution and the National Government would be a major factor in promoting the growth of ELSI in the technical and commercial fields. It is obvious, however, that without any help ELSI must gradually contract and the Region would lose the benefit of this industrial asset.

Mr. Carollo said that if at any time before or during his negotiations with Rome he comes to feel that an immediate participation of ESPI in ELSI would help to his cause, he can and will order ESPI immediately to invest in ELSI. He said further that the reason why no results have been obtained during the last eight months is that Raytheon happened to raise the problem when the political situation in Sicily was in a state of crisis. Up until very recently there wasn't a Sicilian Government. Now there is a political stability and a Government, Mr. Carollo said. He added that we would not have to wait several months again before results are obtained.

He proposed to meet with high-level political authorities in Rome within the nearest future and to have another meeting with us very soon. He then said that if he should be successful in obtaining the placement in whole or in part of the electronics industry in Sicily, the ELSI problem would then be solved as part of such development. If he should be unsuccessful in his attempt, he then would fall back on the solutions that an ESPI participation could offer and make his decisions accordingly.

Exhibit B[1]

21 February 1968.

MEETING WITH HON. VINCENZO CAROLLO, PRESIDENT OF THE SICILIAN REGION, IN HIS HOTEL ROOM IN ROME, 20 FEBRUARY

Present: Messrs. Adams, Clare, Hillyer and Profumo.

C.F.A. opened the meeting with the first paragraph of our prepared speech (Raytheon is convinced that ELSI can succeed with an appropriate partner, but we will not put up any more cash, etc.), and asked J.D.C. to present our interpretation of Hon. C's position at our last meeting.

Hon. C. interrupted saying he is aware he made a commitment to us that IRI or ESPI would intervene within a month, which has not been fulfilled because of the earthquakes. The petition today is as it was in December, but tomorrow, or at latest the day after tomorrow, he will meet with Moro, Preti, Colombo, Andreotti, and Petrilli to discuss the overall package program to aid Sicily. As a part of this plan, Hon. C. hopes to obtain a central gov't commitment to develop the electronics industry in Sicily. This commitment would politically be equivalent to ensuring IRI help for ELSI.

J.D.C. emphasized that too much time has passed, and that although FIAT has offered us a Director, IRI would only agree to provide an unofficial advisor. C.F.A. added that IRI would not consider a Selenia/ELSI merger, which we had proposed.

Hon. C. was quite aware of what IRI had told us, and knows that IRI cannot act until the CIPE plan in out. However, in his meetings of the next day or two he hopes to obtain a political commitment for electronics in Sicily, which will ensure IRI action in the next 8/10 months, and which will allow ESPI to act with fewer limitations. In short, the interests of Raytheon and the Region coincide, as:

1. The Region wishes to protect any sources of jobs, and therefore wishes to protect ELSI, and
2. The Region wishes to use ELSI as its principal reason for centering the national electronics plan on Sicily and in fact on ELSI, and is using ELSI as a positive element in the current Ministerial level talks,
3. If Hon. C. can get a National Gov't commitment to come to Sicily through ELSI, this helps everyone. There will be a "yes" or "no" reply on this in the next day or two; Hon. C. will call us to meet again when he knows the answer and before he returns to Sicily.

Both C.F.A. and J.D.C. stressed again the urgency of the situation.

Hon. C. repeated that our interests are the same, to keep ELSI alive and to improve it. He hopes to achieve this aim in the best way for all of us, by obtaining a political commitment for support from IRI within the next two days. However, if this plan does not succeed, he gives us his "broadest assurance" that ESPI would then promptly intervene with four billion lire.

C.F.A. stated that while our interests do coincide with those of the Region, as a private company we do have obligations to our stockholders. While we can continue to provide ELSI with management and technology, he reaffirmed the Raytheon intention of not investing further money in Raytheon ELSI.

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[1] See also Unnumbered Documents submitted with Counter-Memorial of Italy, Vol. I, Exhibit No. II-15 and III, Correspondence, Nos. 41, 52 and 54.

J.D.C. posed five questions, as follows:

1. Will Hon. C. visit the plant this week? Ans: No, because he will be here in Rome working on Moro *et al.* Anyway, he did visit the plant six years ago.
2. Will he promise to talk to us again before returning to Palermo? Ans: Yes.
3. If the National Gov't. will not intervene, what will be the extent of ESPI's intervention? Ans: A very delicate question, based on our decision on whether we have the experience and the intelligence locally to manage such an enterprise. (Hon. C. obviously felt local intelligence would *not* be sufficient, later stating that ESPI would run the company into the ground in a year or two, if left to its own desires.) JDC attempted valiantly to argue that with a Fiat Director and possibly an IRI Director acting for ESPI, ESPI could make a go of a majority position, particularly with continuing management help from Raytheon. Carollo would not buy this argument, unless the presence of Fiat and/or IRI was backed up by a financial commitment.
4. If the National Gov't. will not intervene before you return to Palermo, can you give us an immediate private commitment that the Region will intervene? Ans: Yes.
5. How long will it take ESPI to go through the bureaucratic formalities leading to final investment? Ans: 30 to 60 days.

The meeting concluded with expressions of sympathy to Hon. C. for the disasters in the Region and of gratitude for his attention to our problem. (It was decided by private exchanges not to leave any documents with Hon. C. The pre-prepared "Notes for the Meeting" were left at his hotel later that evening with point (8) and the preceding paragraph on possible labor problems deleted. The following day, 21 February, a letter outlining Raytheon's conditions for continuing at ELSI, together with a draft shareholders' agreement with ESPI, and summary thereof, was delivered to Hon. C.'s hotel.)

S.H.H.

Exhibit C[1]

SUMMARY OF THE TALKS HELD AT IRI ON 4 JANUARY 1968, BETWEEN IRI MANAGEMENT, THE CHAIRMAN OF FINMECCANICA AND MR. JOHN D. CLARE, VICE-PRESIDENT OF RAYTHEON EUROPE

IRI acknowledged that through Finmeccanica, it has received the new documentation on Raytheon-ELSI. This documentation included a proposal that IRI participate in an increase of ELSI's capital from 4 to 10 billion lire; the entire increase of 6 billion lire would be requested from new Italian partners.

IRI and Finmeccanica point out that in this new ELSI report, there seems to be little justification for modifying the opinion on the ELSI situation which they expressed at the previous meeting with Raytheon. The financial support to be provided by the proposed new capital of 6 billion lire is not in itself sufficient to improve significantly the basic operating position of the company, which remains in extremely serious condition notwithstanding the praiseworthy efforts made by Raytheon to achieve a sound basis of operations.

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[1] See also *Unnumbered Documents submitted with the Counter-Memorial of Italy*, Vol. I, Exhibit No. II-13.

Mr. Clare, while agreeing on the seriousness of the present operating situation at ELSI, underlines the basic values represented by the plant and equipment, by the technology, and by the work force, all achieved in Sicily by the company. He also stressed the large investment made by Raytheon to create these values, and expressed the conviction that the participation of a new partner such as IRI would have substantial favorable repercussions both on management capability and on sales results, quite apart from the purely financial improvement represented by the new investment.

IRI and Finmeccanica do not agree with this point of view, which in valid terms of argument is not a tenable position. IRI and Finmeccanica point out that within the IRI Group, there are no concrete possibilities of ensuring a direct market outlet for Raytheon-ELSI's production. The only exceptions to this statement concern areas of marginal interest, or areas in which other IRI companies, which already have substantial problems of their own to be solved, are currently operating (as for example ATES, which also is in Sicily).

In summary, IRI believes that Raytheon-ELSI's situation cannot be made economically sound on the basis of the program outlined in the documentation submitted, and therefore does not see a possibility of intervention in the company. This belief is strengthened by IRI's conviction as mentioned above that its intervention would not bring about any significant change in the marketing position of the company, or as a consequence in the company's basic economic position, which would remain a serious problem area.

However, IRI desires to point out that even though — with great regret — it cannot accept Raytheon's request at this time, it remains possible that a later request by Raytheon might receive more favorable consideration. Such a decision could come when IRI, which intends to develop its activities in the electronics field, has completed an analysis in this area which is now being made in cooperation with other national groups interested in the electronics sector.

This analysis, which is expected to take one year, will permit a review of the general problem with much greater understanding. It should also lead to a determination of whether it will be possible for IRI to contemplate a special program of intervention to assist in putting Raytheon-ELSI on a sound basis, as requested by Raytheon.

Mr. Clare indicated his disappointment with the present decision made by IRI and took note of the further declarations of the Institute, stressing that unfortunately much time has passed since the first conversations on the ELSI problem, and that in the intervening period Raytheon has had to devote many efforts to the ELSI situation, without outside assistance.

Exhibit D[1]

MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS HELD AT 12.00 P.M. ON 16 MARCH 1968, AT VIA FERDINANDO DI SAVOIA 6, ROME, FOR A DISCUSSION AND DELIBERATION OF THE FOLLOWING

Agenda

1. Report by the Chairman on the corporate situation and the aspects of continued operation in light of the mandate given him at the Board meeting on Tuesday, 12 March 1968; possible convocation of special assembly, and appropriate resolutions.
2. Miscellaneous.

In attendance:

For the Board of Directors:

John D. Clare	Chairman
Justin J. Guidi	Managing Director
Ing. Aldo Profumo	Managing Director
Att. Rinaldo L. Bianchi	Director
Joseph A. Scopelliti	Director
Royal P. Allaire	Director

For the union committee:

Dr. Ugo Frediani	President
Rag. Dario Fanfoni	Syndic

Excused from participation are Syndic Dr. Giuseppe Alabena and the Secretary of the Board of Directors Dr. Giuseppe Polizzotto.

The Chairman Mr. John D. Clare opens the meeting confirming the appropriateness of the convocation and the validity of the session, and asking Mr. Rinaldo L. Bianchi, Attorney, to act as the Secretary. He then moves on to the first subject on the agenda.

1. Report by the Chairman on the corporate business situation and on the continuation of operations in relation to the mandate given him by the Board of Directors in the meeting of Tuesday, 12 March 1968, possible convocation of a special assembly, and appropriate resolutions.

With reference to the mandate conferred upon him and the Managing Directors at the Board meeting of 12 March 1968, the Chairman, also on behalf of the Managing Directors, reports that the banking institutions which are creditors of the company have been apprised of the current business situation and of the necessity to consider closing down the operation if it turns out to be impossible to arrange for financial participation of a qualified Italian partner. The said institutions have offered active support in search of such participation and have also expressed their intention to collaborate with Management at this time to avert any uncontrollable situation. At the same time, contact has been taken up with people in the Central Government who on their part have given their assurance of support in the quest for participation by the IRI group together with that of ESPI. There has also been contact with private industries. Such participation would be acceptable to the stockholders. Although assurances have been made to the company on various occasions, none has so far developed into something tangible or concrete. Meanwhile, the business situation of the company has deteriorated to a point too critical to be ignored, the Chairman adds. Even if every possible effort is made to resolve the situation, it becomes necessary for the Board to providently arrange for the cessation of the company's activities and to plan for the ultimate sale of assets on the best possible terms for the purpose of satisfying the company's obligations. The stockholders have been advised of the facts and of the imminence of the cessation of the company activities.

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[1] See also pp. 277-278, *infra*.

After an in-depth discussion and clarification of any open points, the Board members declare themselves satisfied with the Chairman's report and decided on the following statement:

> "Since the last Board Meeting, additional efforts were made by management to enlist the intervention, financial and industrial of third parties, both on the governmental level and on that of private industry. Such efforts having until now been unsuccessful, in view of the worsening situation of the Company, the Board deem that there is no alternative other than the cessation of the Company's (sociali) activities. The shareholders have been informed of the latest developments and have expressed their approval of the action being taken today.
>
> After ample discussion, the Board unanimously . . . resolves the cessation of the Company's activities to be carried out as follows:
>
> (1) cessation of production will be effected immediately;
> (2) cessation of trading and dismissal of employees will be effected on 29 March 1968.
>
> The shareholders meeting called on 28 March 1968 will adopt the necessary formal resolutions.
>
> The Board gives to the Managing Directors mandate to illustrate the situation of the Company and the events that led to the resolution adopted by the Board to the unions and representatives of the Company's employees and to all competent authorities."

The Board of Directors.

2. *Miscellaneous.*

None of the gentlemen present has any other points to discuss. With nothing else on the agenda and no one else asking to speak, the meeting is adjourned for the drawing up of the minutes and reconvened for approval of the same. After perusal and approval of the minutes, the meeting is closed at 1.30 p.m.

The Secretary
(Signature)

The Chairman
(Signature)

Exhibit E

MEETING WITH HON. CAROLLO, IN THE EVENING OF 26 MARCH 1968, IN ROME, AT HOTEL METROPOL

Present: Messrs. Carollo, Clare, Profumo and Scopelliti.

President Carollo started by saying that he had a meeting earlier with Colombo, Moro and Medugno. He had tried to contact Profumo to ask him to attend but was unsuccessful. He said that the Region would intervene and that tomorrow at 10 a.m. he would tell us how. J.D.C. asked a number of questions including:

- What about the 70/30 agreement we were discussing this morning? and Carollo answered: I will tell you tomorrow.
- What about the level of money involved? — I will tell you tomorrow.
- Is IRI or someone else coming in? — Leave the Central Government to me.

He was in an almost friendly mood and then he said: Let me talk about something else quite outside ESPI. IRI-Raytheon relations are very bad. Raytheon must take care of IRI or IRI will take care of Raytheon. The problems come out of Selenia through our own people and go to other groups outside. He indicated that it would probably be useful if we want to win the battle against IRI to resume an old project we set aside a year or two ago. (Merger of Selenia and ELSI?) You have a big battle ahead of you. IRI is not alone (probably referring to GE-Olivetti) and it is going to be IRI or Raytheon. He said in one or two years you are going to have an explosion of legal paper. He said you had the key in your hands but I had to bang open the door. He said that he had not put Medugno in any serious difficulty but he had made him revoke some of his previous statements.

He then called for whiskeys all around and we seemed to be drinking toasts to success.

Profumo stayed behind to talk privately at Carollo's request. He indicated that Fin-Elettronica had been formed, including Monti-Edison and Olivetti (no mention of FIAT). He said that Medugno was very open and had said that Calosi had presented a plan for Fin-Elettronica including Raytheon-ELSI, but only after Raytheon-ELSI was liquidated (he used an Italian word which could mean bankruptcy or liquidation). After this it was planned that Raytheon should disappear from Selenia. Apparently Medugno explained all this plan to Moro.

Moro is apparently a friend of Sette (EFIM BRADE). He is to meet with Carollo and Moro (at 9 p.m. tonight) where the outstanding subjects will be:

1. Should IRI come in? If Sette says "Yes" then IRI will be instructed to come in right away.
2. Should EFIM come in? If "Yes" this can be immediately.
3. Should the Region come in on its own as a stop gap?

After this meeting at 9 p.m. Carollo is meeting Colombo tomorrow at 9 a.m. and meeting us at 10 a.m.

Exhibit F

MEETING WITH CAROLLO, HOTEL METROPOLE, WEDNESDAY, 27 MARCH 1968

Present: Messrs. Clare, Carollo, Oelbaum, Profumo, Scopelliti.

Background Introduction

In a meeting with Carollo on Tuesday (see separate notes) he had finished the meeting by saying that the Region will intervene and that after a meeting with Colombo at 9 a.m. on Wednesday morning he would tell us how in a meeting at 10 a.m. The previous notes on the Tuesday meeting also outlined Carollo's discussions with Moro and Setti of Efim Brade during the Tuesday evening.

Carollo's meeting with Colombo on Wednesday morning took 3 1/1 hours — not 1 hour. Obviously this meant that agreement had not been reached on either IRI or Efim intervention and that discussions with other ministers were involved during this time.

The meeting with Carollo started at around 1.30 p.m. instead of 10 a.m., and his proposals were as follows:

1. It had been agreed that the ELSI problem would be immediately reviewed by the Cipe Committee; that on Friday, the 29th, the Committee would approve the inclusion of ELSI as a components part of the Cipe plans; that a group of Sicilian deputies would be told of this on Friday afternoon; and that it would be announced publicly on Friday, 5 April.
2. He asked for three copies of the Shareholders' Agreement for their immediate review.
3. He asked Profumo to take to Caffani (the Permanent Secretary of the Cipe Committee) by 5 o'clock information on ELSI giving a brief summary of the value of the trained people, the value of the plant and the value of the company; this was to provide the basis of the Cipe Committee decision. He made a comment, *en passant*, that colour TV would soon be unblocked — whatever that means!
4. He said he was prepared immediately to give Raytheon a letter saying that for an intermim period solution the Region would come in on a 50/50 basis, but he would not specify what this meant in the way of actual cash.
5. He wanted his legal and technical experts to put under immediate examination our Shareholders' Agreement proposals and our partnership proposals. This should be done the following day, Thursday, so that he could meet with J.D.C. on Friday to confirm an actual agreement.

J.D.C. then pointed out that this proposal was not the firm proposal we had been led to expect; that we had always emphasized a minimum of 6 billion lire, and that he was still not prepared to specify a definite figure; that the previous day he had indicated a 70 per cent participation by the Central Government and the Region combined, and that there was still no indication of which Central Government group was going to join in.

Carollo replied by stating that we must leave the Central Government problem to him; that we had a three-party front in the battle of the Region, the Unions and Raytheon. If Raytheon broke up this group, then the Unions would go with Carollo and leave Raytheon. He also indicated that if we proceeded with the sending out of the letters of dismissal, then the plant would almost certainly be requisitioned; that he was prepared to pay the people for 1½ months while the liquidation of the company was sorted out; and that the Region and the Unions, together with the Central Government, would then prepare for the liquidation of ELSI, with subsequent rebuilding.

The problems of the markets, keeping key people and the very short time left in which to act were all re-emphasized to him, together with the fact that this was nowhere near a definite enough offer for Raytheon, Lexington, to accept as meeting the requirements which had been specified and discussed over the past months, and particularly over the past month.

It was left that the legal and technical experts would meet the following day and Carollo assured us that he would make certain his experts were briefed to work towards an acceptable solution.

Exhibit G

J. A. SCOPELLITI, 29 MARCH 1968. MEETING WITH CARBONE, EVENING FRIDAY, 29 MARCH 1968

Present: Messrs. E. Carbone, J. D. Clare, J. Oppenheim and J. A. Scopelliti.

Introduction

After the meeting with Carollo on Wednesday, it was agreed to meet his technical staff on Thursday in order to sort out the details of possible co-operation on the general political lines outlined during the Wednesday meeting (we continued to press the 70/30 deal agreed by Carollo in the Tuesday meeting).

The main purpose of this legal and technical meeting was to sort out the details of a possible partnership based on six billion lire with a minority for Raytheon.

Previously, Profumo had fed in the idea of the "11 billion Lire deal" and Carollo's initial reaction had been one of reasonable acceptance. There are separate notes on this legal and technical meeting but briefly three hours were spent wasting time on the partnership deal and at the end there was discussion on the possible sales of the assets to a new company, with an emphasis by the Region on an interim solution.

It had been agreed at the Carollo meeting on Wednesday that we would meet with him again on Friday to confirm some form of final solution. On Friday morning there was a long cabinet meeting at which Carollo was present, followed by a Cipe meeting in the afternoon. There was no message from Carollo but around 9 p.m. we heard that Andreotti wanted to talk to us to pass on a message from Moro and we eventually finished up in Carbone's office, without Andreotti, at around 9.30 p.m.

Notes on the Meeting

Carbone started by apologizing for the absence of Andreotti but made it clear that he was speaking for the highest levels in the Italian Government including the Prime Minister, Moro. He indicated that they could not accept the closure of the plant in the present political situation prior to the elections. He said this would lead to "political revolution" in Sicily, which was completely unacceptable to the Central Government. They, therefore, wanted some interim solution particularly to take over the period until the elections.

His initial proposals can be summarized as follows:

(1) Raytheon does not send out the dismissal letters.
(2) Raytheon opens the plant.
(3) At the end of one week the Italian Government will designate a group that will negotiate to eventually buy or rent the assets from Raytheon-ELSI.
(4) During this period the work people can be paid under some particular Sicilian Laws and the total operating losses will be shared between the Central Government, the Regional Government, the designated Group and Raytheon. He specifically indicated that they would expect Raytheon to make some sacrifices.
    He hoped that the operating losses could be kept to something modest.
(5) After this week they expect within one month to produce a budget for the operating losses, to establish a price to be paid for the assets or a leasing agreement and to determine whether or not an interim solution should be set up for a further period.

The Raytheon reply to this can be summarized as follows:

(1) J.D.C. briefly ran over the history of the past year, a lot of which Carbone already knew. He specifically covered the Raytheon investments in March/April last year and the fact that the Raytheon main Board has been directly involved since that time.
(2) J.O. re-affirmed the Raytheon satisfaction with their co-operation to-date in Selenia and in Italy generally, that because of this they had done everything possible to help in ELSI but that Raytheon was now reluctantly forced to confirm that they were at the end of the road.
(3) J.D.C. confirmed that they now had to check back with Lexington before changing the situation, but it had been made very clear that something positive was required, preferably in writing, and that the proposition put forward by Carbone was not even acceptable to refer to Lexington.

Carbone commented that at this hour of the night we would have to take the word of the Prime Minister of Italy as we could not expect him to put something in writing within the next hour or so, with a clear indication that asking for something in writing from the Prime Minister was not really acceptable.

J.D.C. further emphasized the danger of losing markets, losing people and the need to either open the plant on full production as soon as possible or shut it. Any concept of an interim solution was really doomed to failure for these reasons.

J.D.C. and J.O. then concentrated on the fact that Raytheon wanted a firm proposal over money and that we now wanted a firm proposal for the purchase of the assets.

Carbone then telephoned Pieraccini, the Minister of the Budget, who tried unsuccessfully to contact Moro but who talked to Bo, the Minister of Participation, and came back with the following proposal. Carbone, however, made it clear that Moro had not approved this proposal but he felt sure that it could be accepted because of the statement of the two ministers:

(1) Raytheon would not send out the dismissal notices.
(2) Raytheon would open the plant on Monday morning.
(3) On Monday morning they would arrange for Raytheon to start negotiations with a group consisting of representatives of the Ministries, IMI, Cassa del Mezzogiorno, IRI and another unnamed State Company.
(4) They would immediately start to study the creation of a new company to buy or lease the assets from Raytheon or to create an interim arrangement for a transitional period.

(5) The State and the Region would cover the new losses but this was not clearly defined.

Carbone clearly meant the payment of the salaries and some operating losses but it was not possible to get a clear definition of points such as interest charges.

(6) Under pressure he said these discussions should be cleared in one week and if unsuccessful, then the company should close, but this statement was very unconvincing.

In the following general discussion, Carbone made a point that because of the elections, the Central Government could not accept "political revolution" in Sicily, that we were now in a position of strength, that if we refused the request from the Prime Minister, then we would occur his severe displeasure and that in Italy nothing happens until the roof is on fire.

During the meeting there was a continuous stream of incoming phone calls obviously asking — "How is it doing?".

The meeting finished some time after midnight and we agreed to let Carbone know the following morning what we had then done.

Exhibit H

SATURDAY, 30 MARCH 1968

At 10.00 a.m. Mr. F. Lee spoke to Dr. Carbone to advise him that the dismissal letters had been mailed as scheduled. He expressed extreme disappointment and advised that he would inform Minister Andreotti immediately. He also advised that henceforth the climate of any negotiations with the Central Government would inevitably be much more strained. Mr. Lee advised him that ELSI would be prepared to talk to him or the Minister next week, if the Minister so desired.

SUNDAY, 31 MARCH 1968

Ing. Profumo reported that he met President Carollo at 6.45 a.m. Carollo said to Profumo that Prime Minister Moro told him that an ESPI-IMI company will be formed to deal with the acquisition of ELSI's assets and to serve as a bridge to the time when a "Finelettronica" holding company will be formed which will eventually own ELSI. Carollo said also that Professor Calosi will be placed in charge of Finelettronica. Moro was also reported as saying that the asset-acquisition route was easier to travel for IRI because in following it IRI would not have to collaborate with Raytheon. Carollo then said that to keep the people in Palermo and avoid an exodus to other jobs, and to protect the plant and machinery, the plant would be requisitioned and Profumo would be asked to run it again. The Region would assume the necessary costs until a new company is formed. Carollo said also that he would donate Lit. 20,000 to each employee to offer them some relief.

Annex 16

THE MACHLETT LABORATORIES, INC., CERTIFICATE OF GOOD STANDING, STATE OF CONNECTICUT, DATED 26 DECEMBER 1986

[Not reproduced]

Annex 17

AFFIDAVIT OF JOSEPH A. SCOPELLITI, FORMER CHIEF FINANCIAL OFFICER AND CONTROLLER, RAYTHEON COMPANY, DATED 1 APRIL 1987

I, Joseph A. Scopelliti, personally appeared before Lorraine Lee, a notary public in and for the State of New York on 1 April 1987, and, upon being duly sworn, stated that:

1. My name is Joseph A. Scopelliti. I hold a Bachelor's Degree in Business Administration from Clark University and have studied finance at the graduate level at Boston College. I worked for the Raytheon Company ("Raytheon") from 1959 to 1977. From 1959 through 1966, I worked primarily for Raytheon's Corporate Controller's Office. In 1963 and 1964, I was assigned by Raytheon to work in Palermo as an Operations Consultant with Elettronica Siccula, S.p.A. ("ELSI"), during which time I became very familiar with ELSI's finances and operations.

2. From 1966 through 1977, I was Chief Financial Officer and Controller of Raytheon Europe International, Raytheon's European management subsidiary. In March of 1967, Raytheon Europe's General Manager, Mr. John Clare, was made Chairman of ELSI as part of a major Raytheon initiative to make ELSI profitable. At that time, I also became a member of ELSI's Board of Directors and assisted Mr. Clare as financial adviser. Beginning in 1966 and continuing through the summer of 1968, I was directly involved in all major planning for ELSI, and was ultimately reponsible for the financial aspects of these plans.

3. Raytheon and ELSI's efforts in 1967 and 1968 to make ELSI profitable centered on obtaining a commitment from the Italian Government to support ELSI. ELSI's attempts prior to this time to secure markets for items being used by the Government and government-owned industry and to avail itself of Mezzogiorno incentives were to my knowledge generally unsuccessful. The Central Government, and most importantly its business conglomerate Istituto per la Ricostruzione Industriale ("IRI"), controlled major segments of the Italian economy crucial to ELSI's success or failure, including electronics, telecommunications, health care, military supplies, information and transportation systems, and the Italian banking system. The Italian Government was responsible for supporting these industries, and, through IRI and its other controlled entities, dominated them in many instances as a customer and supplier as well as a shareholder.

4. ELSI's unsuccessful attempts on its own to penetrate the Italian markets, broaden its product lines and obtain the competition equalizing benefits of the Mezzogiorno laws led to the following conclusion. It became clear to myself and other Raytheon and ELSI financial and marketing analysts that without a partnership with IRI or other equivalent governmental entity, ELSI would continue to be an outsider to the Italian industrial community and could not succeed. An important, government-backed Italian partner would offer the benefits of a recognized Italian business network, which, in turn, would assure ELSI's success in securing government benefits and incentives designed to place Mezzogiorno companies like ELSI on a more equal competitive footing within their respective markets. Such a strategic partnership would also positively influence government decision-making in economic planning, thus assuring ELSI of a rightful place in the future of the Italian electronics industry, which was dominated by govern-

ment-backed companies. Although we made efforts (without success) to obtain a partner in private industry, including FIAT, we knew that the active direct and indirect support of the Government was the real key to ELSI's success.

5. To aid in the process of seeking a strategic partner, Mr. Clare and others at Raytheon and ELSI developed detailed plans and proposals for new products which ELSI could readily and profitably produce and sell, especially to IRI. They met extensively with public officials and private individuals to pursue these proposals to find an interested Italian partner that could unlock new markets and assistance under existing laws. These efforts continued until the last day and hour of ELSI's industrial life, which expired in the early morning hours of 30 March 1968.

6. During this intensive activity period, we were aware of the need to have back-up plans in case these efforts were not successful. In the latter part of 1967, we reluctantly began to plan in general for the potential liquidation of ELSI. I was responsible for the financial aspects of this planning, that is, for determining how much could be realized from ELSI's assets, how it could be distributed to creditors, and the timing and cash-flow aspects of the plan. In preparing these plans, I knew that it was essential to be very conservative in estimating how much money could be realized from ELSI's product lines, and to identify every liability which would have to be paid.

7. Working with Raytheon personnel assigned to ELSI, I prepared an analysis of assets, including an inventory, in order to determine how much could be realized in a liquidation. This analysis is attached hereto as Exhibit A. As reflected in that Exhibit, we estimated that approximately 10.8 billion Lire could be realized through an orderly liquidation of ELSI's assets. In preparing this analysis, and in order to be as conservative as possible, we discounted the book value of the assets. Our analysis thus ignored the significant intangible value of ELSI's businesses. Based on information provided by Raytheon officers who were thoroughly familiar with ELSI's assets, customer payment history, and ELSI's financial situation, we projected that approximately 99 per cent of accounts receivable would be collected, along with approximately 54 per cent of the book value of inventories, 61 per cent of the book value of the plant (including the land and equipment and excluding depreciation reserves) and all prepaid expenses. We did not project any realization income for construction in process, other studies in process, deferred costs, or other smaller book-value items.

8. As stated before, we did not project any realized values for ELSI's intangible assets, that is, for its excellent reputation as a producer of reliable electronic products, and its experience and know-how in the electronics industry, its supplier and customer lists and market reputation, patent licenses and other rights to technology supplied by Raytheon and Machlett, and other contracts. Moreover, in ELSI's case, its products were backed by the strong names, technology and reputations of Raytheon and Machlett Laboratories, Inc., and it had established products with a reputation for quality. In our judgment, these items were of significant value and interest to potential buyers.

9. In my experience, companies are often willing to pay a considerable sum simply for the name, technology, and established customers of an electronics business, in addition to the tangible assets. It is not unusual for buyers of going concerns in the electronics industry to pay a price in excess of twice their book value.

10. For purposes of a conservative liquidation plan, however, I chose to exclude any realizable values for such items. As stated above, my objective was to prepare a very conservative plan reflecting the minimum prospects of recovery of values which we could be sure of, in order to ensure an orderly liquidation process. This

plan was ultimately finalized in consultation with Raytheon Vice-President Joseph Oppenheim.

11. In early 1968 and in response to the growing concern that an Italian partner would not be forthcoming, detailed plans were prepared for a shut-down of ELSI and liquidation at any time after 16 March 1968. These plans were thorough and well worked out. They provided for several working groups conducting the liquidation. One group would co-ordinate the entire plan; another would deal with banks and other creditors; another would handle commitments to customers and the collection of receivables; and a final group would co-ordinate the sale of assets.

12. While we were prepared to sell the entire range of businesses to a single purchaser, the separability of each business offered us the additional advantage of appealing to a much broader group of potential purchasers. The TV picture tube line, for example, which held 20 per cent of its respective markets, was housed in a separate building within ELSI's industrial compound, and therefore was salable separately, including its own building, from the rest of the plant. The semiconductor, X-ray tube, surge arrester, and Nato assembly lines, which constituted distinct businesses, could be sold as separate packages, including their respective technology, contracts, customer and supplier bases, and established name and reputation. These product lines could have been sold with their corresponding equipment to buyers elsewhere in Italy, Europe or Japan.

13. On the other hand, the general plant and equipment was not necessarily limited to producing the specific products which ELSI had been producing. The type of facilities and equipment which ELSI had, such as test equipment, calibration equipment, tools and machining equipment, assembly lines, storage bins, and temperature control instrumentation, would be beneficial to producing a wide variety of electronic equipment and, to a more limited extent, for other forms of manufacturing.

14. The plan also dealt in detail with the use of the proceeds from the sale of the assets. Ideally, we would settle first with the small creditors, subject, of course, to the agreement of the major creditors, in order to minimize the administrative effort during liquidation. Secured and preferred creditors would take priority and would be paid when the assets used for collateral were sold. Major unsecured creditors were to be paid on a pro rata basis from within the funds realized from the sale of assets. Then Raytheon would be called upon to satisfy any guaranteed creditor to the extent not already paid from asset sale proceeds. We calculated that the secured and preferred creditors would receive 100 per cent of their outstanding claims, while the unsecured major creditors who were not covered by Raytheon guarantees would realize about 50 per cent of their claims. The latter creditors were certain banks and Raytheon and its subsidiaries. We were confident that an orderly liquidation of this type would be acceptable to the creditors as it was much more favorable than could be expected through bankruptcy. Demonstrating its support of the liquidation plan, Raytheon organized to provide funds to ELSI in advance of the sale of its assets so that disbursements could easily be made to the small creditors and, as a first step, transferred 150 million lire to the First National City Bank branch in Milan specifically for that purpose.

15. Looking back at this plan, and based on my subsequent experience, I believe now, as I believed then, that the plan was sound in every respect and would have been realized. The projected sale proceeds were conservative. The totality of the assets were probably worth more than the 10.8 billion lire planned from their sale. The projected settlements were extremely favorable to the general creditors, considering the alternative. The lost benefits to the general creditors

which would have resulted from an orderly liquidation become clear when compared to what happened in the bankruptcy where the unsecured creditors received only a small fraction of their claims.

16. In view of ELSI's critical situation, on 16 March 1968, ELSI's Board of Directors voted to begin ELSI's liquidation on 29 March.

17. On 1 April, however, the Mayor of Palermo requisitioned ELSI's plant and equipment. With the requisition of ELSI's assets, it was impossible to invite potential buyers to view ELSI's facilities and discuss the sale of the businesses. Moreover, in-process inventories could not be converted to finished products. Suppliers and customers were thus suddenly and abruptly suspended. ELSI's hard-earned market position was quickly taken away by competitors. Not only were the bulk of ELSI's assets suddenly not disposable, but it did not appear likely that Raytheon would ever regain control of them. The requisition action ended our chances of completing an orderly liquidation and obtaining a fair price for ELSI's businesses and assets.

18. In retrospect, I have concluded that there was only one factor, government intervention, which rendered the liquidation plan inoperative. We had carefully considered all threats to our plan, including government intervention, and it was our considered judgment that the plan was properly configured and stood a high probability of success. As for government intervention, we knew of no instances where the Government of Italy had frustrated the liquidation of a private company by requisitioning its assets. Although this in fact did happen, the Government's requisition action was eventually held to be illegal by the highest courts in Italy, but, unfortunately, the process of overturning the requisition order took approximately one and one-half years, during which time ELSI's asset values substantially deteriorated.

19. After the requisition, creditor demands intensified substantially, while the assets which were to be liquidated to satisfy these demands were tied up by the requisition. With this crucial illiquidity, precipitated by the requisition, our Italian counsel, Mr. Giuseppe Bisconti, advised ELSI's Board of Directors that it had no alternative but to file a bankruptcy petition. On 25 April 1968, the Board of Directors voted to do so, and a voluntary petition in bankruptcy was filed by Mr. Bisconti on 26 April at the Tribunal of Palermo.

20. In my view, ELSI could have emerged as a viable competitor in the Italian electronics industry. With a fully trained cadre of employees in place, its modern facilities and excellent reputation, and the continuing technical and product support from Raytheon and Machlett, ELSI offered a very attractive opportunity to a strategically positioned Italian partner. Had such a partnership emerged, I believe that ELSI would have been more successful in obtaining Mezzogiorno incentives, thereby further strengthening its competitive position and increasing its value not only to its shareholders, but also to its community and Italy's development at a whole.

(Signed) Joseph A. SCOPELLITI.

State of New York,
County of New York

Sworn to before me this 1st day of April, 1987.

(Signed) Lorraine LEE.

Exhibit A

RAYTHEON ELSI S.P.A., ASSET ANALYSIS, 3/31/68

		3/31/68	*Realizable*
Capital Equipment:			
Land	167.0		200.0
Buildings	915.7		800.0
Plant Machinery and Equipment	5329.6		3050.0
Furniture, Fixtures, Autos	210.5		150.0
Tax Reserve	463.6		0
		7086.4	
Construction in Process	184.0		150.0
Studies in Process	303.0		100.0
Deferred costs:			
Patents and Studies	853.0		
Start up Costs			
Military Orders	68.1		
Other	496.9		
		1418.0	0
Materials and Work in Process:			
Stores	5519.6		3500.0
Work in Process	0		0
Tax in Reserve	1015.0		0
		6534.6	
Cash Banks	21.3		21.3
Notes Receivable	128.1		128.1
Investments	119.2		0
Accounts Receivable			
Customers	2150.8		2150.8
Affiliated Companies	160.0		0
Other	236.2		236.2
		2493.0	
Deferred Charges	352.4		352.4
Total		18640.0	10838.8

ELSI. SUMMARY — INVENTORY ANALYSIS ESTIMATED AS OF 31 MARCH 1968

(Lire in Millions)

		Book Value		*Sale Value*
Raw Materials and Parts		1371.0		982.8
Cathode Ray Tubes	566.3		430.0	
Magnetron Tubes	310.1		300.0	
X-ray Tubes	79.2		44.0	
Semiconductors	222.6		105.0	
Surge Arresters	46.0		25.0	
Complex Components	2.7		2.7	
Other — Common	144.1		76.1	
Semi-Finished Goods		1407.4		660.0
Cathode Ray Tubes	824.4		375.0	
Magnetron Tubes	248.1		141.0	
X-ray Tubes	159.1		59.0	
Semiconductors	151.7		68.0	
Surge Arresters	24.1		17.0	
Complex Components	–		–	
Other — Common	–		–	
Work-in-Process		822.3		624.4
Cathode Ray Tubes	100.6		100.6	
Magnetron Tubes	518.3		348.0	
X-ray Tubes	59.8		50.0	
Semiconductors	127.4		110.0	
Surge Arresters	6.4		6.0	
Complex Components	9.8		9.8	
Other — Common	–		–	
Finished Goods		1849.6		1147.0
Cathode Ray Tubes	36.0		36.0	
Magnetron Tubes	566.6		424.0	
X-ray Tubes	237.1		188.0	
Semiconductors	954.8		467.0	
Surge Arresters	54.1		31.0	
Complex Components	1.0		1.0	
Other Common	–		–	
Maintenance and Repair Parts		131.0		125.7
Grand Total		5581.3		3539.9

ELSI. INVENTORY ANALYSIS ESTIMATED AS OF 31 MARCH 1968
(Lire in Millions)

Cathode Ray Tubes

			Book Value	*Sale Value*
Raw Materials and Parts			566.3	430.0
Glass — mostly 19″ 50M @ 5000 L.		250.0		
Ears	3 mos supply			
Strapping	50M tubes use			
Silicate	per mo 1200 L			
Gun Parts	ave mat cost			
Cathodes	3 × 50M × 1200 L =	180.0		
Graphite — acetone, etc.		430.0		
Semi-Finished Goods			824.4	375.0
Tubes to be reworked 60,000 @ 4500 L		270.0		
Customer rets to be tested 100,000 @ 4500 L		45.0		
Tubes to be finished and misc. sizes		60.0		
Work-in-Process				
Mostly 19″ tubes			100.6	100.6
Finished Goods				
4800 Tubes @ 7500 L			36.0	36.0
Maintenance and Repair Parts			18.0	18.0
Total			1545.3	959.6

Notes:

Write down of 130.0 of Raw Material and Parts represents material not currently used in production. Although it does have value, it was not considered in above analysis.

Above costs represent standard costs.

Write down of 449.4 of Semi-finished Goods is for tube types and sizes not currently in demand. Although there is value, it was not considered in above analysis.

Selling price (average) is 9500 L.

ELSI. INVENTORY ANALYSIS ESTIMATED AS OF 31 MARCH 1968
(Lire in Millions)

Magnetron Tubes

	Book Value	*Sale Value*
Raw Material and Parts	310.1	300.0
Semi-Finished Goods 180 — QK707A ES-410 B	248.1	141.0

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	Book Value	Sale Value
Work-in-Process	518.3	348.0
125 — QK707A 25-ES-410B		
10 — ES115		
Finished Goods	566.6	424.0
149-RK6027 83-2J70A 81-2K28		
410-2J42 75-5609 130-QK707A		
Maintenance and Repair Parts	4.6	4.6
Total	1647.7	1217.6

Notes:

Write down of 10.1 of Raw Materials and Parts represents material not currently used in production. Material does have value.

Write down of 107.1 of Semi-Finished Goods covers items such as 70ES1229-135 ES1102 some faulty QK707s and QK390.

Write down of 170.3 of Work-in-Process represents radarange work-in-process, types which are extremely slow moving such as ES-1102 klystrons and some faulty ES410Bs.

Write down of 142.6 of Finished Goods represents slow moving types plus some obsolescence.

ELSI INVENTORY ANALYSIS ESTIMATED AS OF 31 MARCH 1969

(Lire in Millions)

X-ray Line

		Book Value	Sale Value
Raw Materials and Parts		79.2	44.0
Semi-Finished Goods		159.1	59.0
Work-in-Process		59.8	50.0
Finished Goods		237.1	188.0
Consigned to customers	9.0		
Consigned to agents and distributors	4.0		
Maintenance and Repair Parts		0.5	0.5
Total		535.7	341.5

Note:

Write down of 35.2 of Raw Material Parts, 100.0 of Semi-Finished Goods, 9.8 of Work-in-Process, 49.1 of Finished Goods represents material and product that are not currently being used in production, slow moving tube types and some obsolescence.

ELSI. INVENTORY ANALYSIS ESTIMATED AS OF 31 MARCH 1968

(Lire in Millions)

Semiconductors

		Book Value	*Sale Value*
Raw Materials and Parts		222.6	105.0
Semi-Finished Goods		151.7	68.0
Work-in-Process		127.4	110.0
Finished Goods		954.8	467.0
6.0 Million @ 20 L	120.0		
2.0 Million @ 7 L	14.0		
TR22A Milano	170.0		
Palermo and Milano	163.0		
Maintenance and Repair Parts		17.4	17.4
Total		1473.9	767.4

Notes:

The Milano warehouse has approximately all of the semiconductor material and product which is considered excess, slow moving, recoverable and obsolete types. This material and product does have value, however, the above figures have been adjusted to reflect an extremely low recovery value or no value.

70,000 Chips are in stores ready for shipment to Machlett USA.

ELSI. INVENTORY ANALYSIS ESTIMATED AS OF 31 MARCH 1968

(Lire in Millions)

Surge Arresters

	Book Value	*Sale Value*
Raw Materials and Parts	46.0	25.0
Semi-Finished Goods	24.1	17.0
Work-in-Process	6.4	6.0
Finished Goods	54.1	31.0
Maintenance and Repair Parts	–	–
Total	130.6	79.0

Note:

Write down in the various categories listed above are for slow moving types, material not used in current production and some obsolescence.

ELSI. INVENTORY ANALYSIS ESTIMATED AS OF 31 MARCH 1968

(Lire in Millions)

Complex Components

	Book Value	*Sale Value*
Raw Materials and Parts	2.7	2.7
Semi-Finished Goods	–	–
Work-in-Process	9.8	9.8
4500 Sparrow modules		
1000 Sparrow modules to be tested		
Finished Goods	1.0	1.0
1000 Sparrow Modules		
Maintenance and Repair Parts	0.2	0.2
Total	13.7	13.7

Note:

There are also 4000 light dimmers in process.

Most material consigned to ELSI from Raytheon USA.

ELSI. INVENTORY ANALYSIS ESTIMATED AS OF 31 MARCH 1968

(Lire in Millions)

Other — Common to All Lines

	Book Value	*Sale Value*
Raw Materials and Parts	144.1	76.1
Metals, chemicals, oils, etc.		
Maintenance and Repair Parts	90.3	85.0
Total	234.4	161.1

Note:

Write down as shown covers obsolete material, parts, etc., no longer needed or used. However, some of this material does have some value although not considered above.

ELSI. ANALYSIS OF ACCRUED RECEIVABLES AND PREPAID EXPENSES, 31 MARCH 1968

(Lire in Millions)

	Book Amount	*Estimate of Realizable*
Quantity Discounts	25.5	20.0
Klystron Price Revision	251.7	180.0

(continued on next page)

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	Book Amount	*Estimate of Realizable*
Reimbursement of IGE tax on exports	47.2	47.2
Prepaid Insurance	5.4	
Prepaid Interest	3.6	
Prepaid Rent	3.6	
Prepaid Rental — Telex	1.1	
Reimbursement of SETEL expenses	14.3	9.0
	352.4	256.2

Notes:

The estimate of realizable value of accrued receivables represents a conservative evaluation.

1. Quantity Discounts — Since some of the purchase contracts had a few months remaining the quantity levels attained would produce a lower discount rate.
2. The Klystron Price Revision figure of 251.7 can be considered, under present conditions, somewhat optimistic. The 180.0 is conservative and represents original submission of value on this contract.
3. Not included in the above figures is an ELSI claim for reimbursement under the Italian "Mezzogiorno Investment Plan". At the time the Plant was closed Ing. Montalbano and Rag. Fiandaca were working on the resubmission of this claim. From 100.0 to 300.0

ELSI. ANALYSIS OF ACCOUNTS RECEIVABLE OTHER, 31 MARCH 1968

(Lire in Millions)

	Book Amount	*Estimate of Realizable*
Advances to Employees — Factory — Office personnel	57.0	57.0
Cash Deposit with Customs	21.1	21.1
Bid Deposits with Government Agencies	15.5	15.5
Bid Deposits Third Parties	9.0	9.0
Reimbursement of IGE Tax on Exports	71.9	71.9
La Centrale S.p.A.	0.3	0.3
Bureau de Gestion	1.2	1.2
Advance to Mr. Conoscenti	0.3	0.3
Engineer Fontanella	4.3	–
CRAL — Loan — ELSI Employees Club	12.0	5.0
Sicilian Region — Payment for Interest on IRFIS loan	3.0	3.0
Soc. Iniziative Meridionali	0.3	0.3
Bianculli — Milan Customs Deposit	0.1	0.1
Advances to Employees — Travel	5.6	–
Advances for Market Development	2.3	–
General Administration	1.1	–
Avv. Cochetti — advance for legal expenses	0.4	–
Advance to Mr. Puccia (since paid)	1.0	1.0

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	Book Amount	*Estimate of Realizable*
Avv. Arnone — advance for legal expenses	0.2	–
Prepaid Employee Taxes	25.0	25.0
Advances to Agents against commissions to be paid	4.2	–
Round-off on salary computations	0.4	–
Total	236.2	210.7

RAYTHEON ELSI S.P.A., ASSET ANALYSIS, 31 MARCH 1968

		At 31/3/68	*Realizzabile*
Immobilizzazioni:			
Terreno	167.0		200.0
Fabbricati	915.7		800.0
Impianti, Macchinari, Attrezzature	5329.6		3050.0
Mobili, Arredi, Automezzi	210.5		150.0
Riprese Fiscali	463.6		0
		7086.4	
Lavori in corso per impianti		184.0	150.0
Lavori in corso per studi		303.0	0
Partite da ammortizzare:			
Brevetti, Studi	853.0		
Commesse Militari	68.1		
Diversi	496.9		
		1418.0	0
Materiali e lavori in corso:			
Magazzino Merce in lavorazione	5519.6		3500.0
Riprese Fiscali	1015.0		0
		6534.6	
Cassa, Banche, cc Postale		21.3	21.3
Portafoglio Effetti		128.1	128.1
Partecipazioni		119.2	0
Clienti	2150.8		2150.8
Società Collegate	106.0		
Crediti Diversi	236.2		236.2
		2493.0	
Ratei e Risconti Attivi		352.4	352.4
Totale		18640.0	10838.8

Annex 18

"A New Industry in an Ancient Land", Raytheon-ELSI, S.p.A. Brochure, October 1963

[Not reproduced]

Annex 19

Sales Brochure, Raytheon-ELSI, S.p.A.

[Not reproduced]

Annex 20

Aerial Photograph of Elettronica Sicula, S.p.A., Plant, in Palermo, Sicily, 1962

[Not reproduced]

Annex 21

AFFIDAVIT OF RICO A. MERLUZZO, FORMER DIRECTOR OF PLANNING, RAYTHEON-ELSI, S.P.A., DATED 17 APRIL 1987

I, Rico A. Merluzzo, personally appeared before a notary public in the Commonwealth of Massachusetts and, upon being duly sworn, stated that:

1. On 11 March 1951, I was employed by Raytheon Company ("Raytheon") to work as a draftsman in Lab 16, where Thomas Phillips was the supervising engineer.

2. In 1957, I received an associate degree in mechanical engineering from Northeastern University. Two years later, in 1959, I received a bachelor of science degree in engineering management from the same university.

3. From 1961 through 1967, I was employed by Raytheon as a mechanical drafting manager at Bedford Laboratories where I was given assignments of increasing responsibility supervising from 20 to 200 employees who produced engineering drawings for complex missile systems.

4. In May or June of 1967, Thomas Phillips, then President of Raytheon, asked me to join a special team which would travel to Italy and utilize its members' expertise to make Elettronica Sicula S.p.A. ("ELSI") a self-sufficient enterprise. Mr. Phillips explained that Raytheon was embarking upon a major effort to make ELSI profitable and that he had contacted me about joining the team because I was familiar with the intricate development and manufacturing techniques required by an electronics facility from my work at Waltham and Bedford Laboratories, had been responsible for organizing numerous activities at Raytheon, and spoke fluent Italian.

5. After spending two weeks in Italy studying ELSI's facility and meeting in the United States with members of the special team, who were key employees of Raytheon, I agreed to join the team and become ELSI's Director of Planning. Subsequently, I met with representatives of two wholly owned subsidiaries of Raytheon, Machlett Laboratories and Raytheon-Europe.

6. In July of 1967, I moved my family to Palermo, Italy, and began working full time at ELSI's plant, which produced sophisticated electronic products, including components of Raytheon's Hawk missile which was then being manufactured in Europe by the NATO allies.

7. Besides myself, the members of the special team dedicated to making ELSI self-sufficient included John Clare, President of Raytheon-Europe and Chairman of the Board of ELSI, Rinaldo Bianchi, Legal Counsel for Raytheon-Europe and Director of ELSI, Joseph Scopelliti, Controller of Raytheon-Europe and Director of ELSI, Dominic Nett, Controller of ELSI, Phil Puccia, Assistant Controller of ELSI, John Stobo, Vice President and co-Manager (with Aldo Profumo) of ELSI, Jack Mazzotti, ELSI's Director of Administration and Finance, Royalle Allaire, ELSI's Director of Engineering, Carmello Barbagallo, ELSI's Assistant for Cost and Inventory Systems, and Sid Standing, ELSI's Technical Expert on cathode ray tubes.

8. During late July of 1967, Jack Mazzotti and I commenced a study of ELSI's production lines and plant conditions. At that time, ELSI was divided into five manufacturing subdivisions which produced: (1) black and white cathode ray tubes (picture tubes) for television set manufacturers; (2) microwave tubes for

civilian and military radars, telecommunications equipment, and radaranges; (3) three types of mercury vapor lamps for lighting roads, yards, and depots and self-piloting multiple surge arresters for the protection of terminal equipment and employees against overvoltages transmitted by telephone lines; (4) X-ray tubes for various medical and industrial applications; and (5) semiconductors, including germanium transistors and silicon rectifiers, for computers, missiles, and other electronic equipment.

9. Our preliminary examination of ELSI's product lines and plant conditions revealed that, while ELSI had done an outstanding job of producing these products, including microwave tubes for the Nato Hawk missile program, and established a technologically advanced facility, including a fully equipped laboratory to develop picture tubes for color television, there were various steps which could be implemented immediately to improve the operation and make ELSI more efficient and profitable. These included establishment of a feeder warehouse and repair cycle, implementation of controls on raw materials and finished goods, modification of work stations, elimination of unnecessary warehouse space, repair and maintenance of equipment, institution of new production techniques, and the commencement of studies to ascertain (1) causes of voids appearing on the face of picture tubes, (2) methods for reducing percentage of scrap material, (3) training needs of employees, (4) maximum production capacity, and (5) appropriate cost standards for each step of the production process.

10. For example, our preliminary study found that when voids or cracks occurred in a picture tube during fusion of a glass neck onto the tube, ELSI rejected the tube and sent it to a warehouse for storage. As a result of this practice, ELSI had over 100,000 defective picture tubes stored in various warehouses. Accordingly, if we established a system where defective tubes were repaired and fed into the manufacturing cycle from a special warehouse, rather than stored in leased space for years, ELSI could recover its investment in the tubes, reduce purchases of the glass tubes from manufacturers in France and Germany, and eliminate unnecessary storage space.

Further, our preliminary study found that, if work stations were relocated near equipment necessary for the stations to perform their assigned tasks, equipment necessary to perform tasks efficiently was repaired or purchased, and approximately five tons of scrap material stored in barrels throughout the plant was removed, then ELSI could reduce the occurrence of backlogs at work stations, complete production in shorter periods of time, and improve worker performance, thereby increasing its volume of products manufactured and reducing its manufacturing costs.

11. After we completed our various studies, we were able to implement additional steps to make ELSI as efficient and profitable as possible. We established new procedures for receiving competitive sealed bids from vendors, inspecting materials and equipment received from vendors to assure that they met required specifications, assigning space at the plant to obtain optimum utilization, reducing the amount and cost of ELSI's utility consumption, forecasting monthly sales and preparing production schedules based upon those monthly forecasts, taking accurate inventories of raw materials and finished goods, reducing pilferage of raw materials and hand tools, maintaining production and test equipment, centralizing production lines to improve efficiency and reduce overhead, distributing personnel efficiently to work stations, controlling quality and delivery of products, and reporting accurately production yields and scrap.

12. As a result of our investigation into the causes of voids appearing on the face of television picture tubes manufactured in the ELSI plant, we found that the water used to wash the inside of the tubes was contaminated by bacteria

which prevented the phosphorus coating for the tubes from being deposited evenly. We, therefore, expended in excess of $100,000 to install a water purification system, which would permit an even application of phosphorus and result in the consistent manufacture of picture tubes which produced clear images.

13. In addition, we built four classrooms to accommodate the 125 employees, instructors, and equipment involved in our new nine-month training program which was geared to the techniques of manufacturing new electronic products for which we expected orders.

14. As Director of Planning, I was also aware of efforts by other employees to make ELSI self-sufficient. These activities included efforts by management and the sales force to obtain orders for X-ray tubes from government hospitals, to increase sales to the Railway and Postal, Telegraph and Telephone Systems operated by the Italian Government, and to reduce ELSI's manufacturing costs and prices by obtaining transportation subsidies for ELSI as a Mezzogiorno firm.

15. ELSI's work force co-operated fully with our plant improvements, sales efforts, and training program. ELSI's employees frequently told me that they were pleased with our efforts to revitalize ELSI and that they understood we were attempting to save the company and provide continued employment. In fact, ELSI's employees invited me and other members of the special management team to attend their social club in downtown Palermo and to participate in their gymkhana race, activities which generally members of management are not invited to join.

16. In early 1968, the plant experienced some "hiccup" strikes, brief work stoppages, which were due primarily to employee concern over the lack of attention from the Sicilian and Central Government of Italy to the economic problems at ELSI. Because I spoke fluent Italian, I was often called upon to negotiate a resolution to these brief work stoppages. During such negotiations, it was obvious the employees were very frustrated because they knew that: (1) despite all of Raytheon's efforts to make ELSI self-sufficient, ELSI would have to dismiss employees unless it obtained new orders for electronic products, including orders for X-ray tubes and telephone equipment, or an Italian partner who could furnish new product markets; (2) the Italian Government had the ability to furnish ELSI with new markets and such a partner, for example, Istituto per la Ricostruzione Industriale ("IRI") and Ente Siciliano per la Produzione Industriale ("ESPI"); and (3) pleas for such assistance were being ignored by officials of the national Government.

17. Despite the short work stoppages in February and March of 1968, operations continued throughout this period. During late March of 1968, John Clare called a meeting which was attended by a number of ELSI and Raytheon-Europe managers, including Jack Mazzotti and me. John stated that ELSI would have to dismiss all but 120 employees needed to continue some operations because ELSI and its shareholders had determined that their efforts to obtain markets for new products, an Italian partner, and benefits from the Italian Government under the Mezzogiorno laws had failed, that ELSI would undergo an orderly liquidation, and that Raytheon was sending some of its most experienced senior officers to Italy to co-ordinate the liquidation.

18. Before an orderly liquidation could be completed, however, John Clare advised me that on April 1, 1968, the Mayor of Palermo had requisitioned the plant and other ELSI assets. Mr. Clare and other senior ELSI officials requested that I stay at the plant night and day to preclude local authorities from somehow asserting that the plant had been "abandoned" by ELSI.

19. For the next several weeks, I lived in ELSI's management offices. Arrangements were made for food and other necessities. While I was told that the keys

to the plant had been turned over to government representatives, I never observed any attempts by the Government to use, run, or maintain the plant. Further, no one ever officially asked me to leave the premises.

20. Prior to the requisition of the plant, the local Carabinieri kept order and did not permit the workers to occupy the plant premises. After the requisition, however, they did nothing to prevent ELSI's former employees from occupying the plant grounds or to terminate that occupation.

21. One day while my bodyguard and I were babysitting the plant, we received word that ELSI's former employees, who had been allowed by the Carabinieri to occupy the plant grounds since shortly after the requisition, were going to storm the plant within minutes and had threatened to blow it up in order to gain national attention so that ELSI's problems would be solved by active governmental intervention. My bodyguard directed me to stand behind him outside the plant door. As the workers came running and shouting toward the plant, my unarmed bodyguard raised his hand, ordered the workers to stop, and directed them not to go in the plant or harm me. To my amazement, they did what he ordered and squatted on the premises in front of the production plant. We then returned to the management offices.

22. Shortly thereafter, I received a tip that the employees were convinced they had to do something dramatic to get the Government to take more rapid action in solving ELSI's problems. I was told that the ELSI workers had decided to join forces with ruffians from the Palermo docks and that they would either fire shots at the plant or blow it up. While I did not believe the workers would go that far in their attempts to get the Government to take action, I agreed to meet with representatives of the employees to answer questions about ELSI in order to defuse the situation. After I answered their questions for over 24 hours, the workers left the grounds of the plant and all was quiet once again.

23. In late April of 1968, I received word that ELSI had been forced to file for bankruptcy as a result of the requisition by the Mayor of Palermo and that I could, therefore, leave the plant. As I was leaving, however, the workers stopped me and had me return to my office, where they made me dump everything out of my briefcase. My briefcase had contained my personal files and notes regarding studies and proposals for ELSI, which I wanted to take with me. The workers told me they were keeping all of my files and notes, except two or three items. Thereafter, I immediately departed the plant and never returned.

(Signed) Rico A. MERLUZZO.

Subscribed and sworn to before me this 17th day of April, 1987.

Middlesex, ss., Commonwealth of Massachusetts.

(Signed) Stuart S. HELLER,
Notary Public.

Annex 22

"PROJECT FOR THE FINANCING AND REORGANISATION OF THE COMPANY", 1967 REPORT PREPARED BY RAYTHEON-ELSI, S.P.A.

CHAPTER I

INTRODUCTION AND SUMMARY OF CONCLUSIONS

This report is prepared by Raytheon-ELSI for submission to ESPI proposing Regional Government intervention in defined ways. Figures on the present situation are obviously available but the extrapolations for the future have necessarily been done in a very short time and will require later detailed consolidation.

Raytheon-ELSI now represents a significant socio-economic asset in Sicily built up at a very heavy cost to Raytheon. These proposals are aimed at maintaining and expanding this asset with all the attendant socio-economic benefits.

It is proposed that the Regional Government should invest 6 billion lire in Raytheon-ELSI as additional capitalisation of the company. Raytheon have already invested 8 billion lire of which only 4 billion lire appear as the par value of the Company's capital stock. Raytheon would not want to claim back any of its invested money and would be prepared to regard the present par value as being 4 billion lire.

Another area of help requested from the Regional Government is in approaching Central Government agencies to help provide new products for ELSI to augment the ones provided by Raytheon. With the proposed plan it is possible to reach a sales level in two years time which will make the present work force of 1,050 a viable commercial proposition and in the three ensuing years, with the appropriate Government help in new product areas, to increase the work force to 1,500 people.

The proposed financial plan is regarded as being conservative and the figures given there are, for sales and staff numbers, slightly lower than those given above. With the real enthusiastic support of ESPI and with the later support of Central Government agencies for our products, these figures could be considerably increased.

The new laws covering assistance in transport costs, in capital investment allowances and in assistance with training costs, will need to be made operative and favourably interpreted. This will be possible and can be vigorously pursued after ESPI's participation in ELSI.

The alternative to the plan is that presently over 300 people are really redundant and thereafter the annual sales, and hence the people required, will tend to reduce with a very significant reduction due to the CRT line in something like two to three years time.

CHAPTER 2

HISTORY OF RAYTHEON-ELSI S.p.A.

Elettronica Sicula S.p.A. was founded by the Moro group of Genoa on 18 May 1954, with deed 35663 under the hand and seal of Vito Di Giovanni, a Notary Public in Palermo.

The birth of ELSI has been a very interesting experience. With the exception of the investments made in the petrochemical field, nearly all the other initiatives in Sicily up to that time (and after as well) were essentially devoted to the traditional fields of endeavour and, therefore, did not represent an actual effort to insert Sicily in the future of world industry.

ELSI was trying to move away from tradition and place itself in the fore of industrial and technical development both through its decision at that moment to operate in the extremely new and rapidly developing field of electronics and, even more, by selecting in this field families of products technically advanced and difficult.

Raytheon Company of Lexington, Mass., USA, one of the most important and dynamic American electronic companies devoted to the study and production of the most advanced electronic systems, joined this venture both by participating 12.6 per cent in the capital of ELSI and by signing a license agreement whereby ELSI acquired the right to use Raytheon patents and know-how for microwave tubes to be made in Palermo. This contribution was a vital and essential condition for the beginning of the operation.

Before building the plant, the initial capital was raised to 750 million lire, of which 12.6 per cent was owned, as stated, by Raytheon, 33 per cent by the Sicilian Regional Fund for Industrial Participations, 54.4 per cent by the Moro Group of Genoa.

The first products to be made were microwave tubes, for which a license had been obtained from Raytheon, X-ray tubes for medical applications, thyratrons and telephone surge arresters.

For the latter all the patents, know-how and market had been acquired from FIRAR of Genoa.

The plant was inaugurated and began production, though on a very limited scale, in November 1956, with a total force of about 100 employees, labour and white collar workers included. All the personnel for the production work and administration was hired locally, while the technicians and engineers were temporarily imported from Genoa (former FIRAR personnel).

After two years (1959) experience proved:

1. Though we started training workers with no previous industrial experience, the results were excellent. We had managed to achieve, in 24 months, good results both in quality of work done (even though the technologies taught and used were really difficult) and in quantity of work. Of course, the training turned out to be very expensive and the burden was borne entirely by the company.
2. A production consisting only of microwave and X-ray tubes and telephone surge arresters had too narrow a base to warrant the installation of those facilities and common services essential to obtain products of high stable quality, that is, equal to those made by the licensor and, therefore, competitive on the market.
3. To create a sufficiently strong and wide sales network it was necessary to add other products.

On account of the modest size of the Moro Group no expansion was possible with such group. Therefore the groups as well as the Regional Fund for Industrial Participations sold their shares to La Centrale Finanzaria, S.p.A., of Milano. The latter together with Raytheon increased the stock capital first to 1,000 million lire on 22 May 1959, and then to 2,000 million lire on 19 July 1961.

Also in this phase of the development of ELSI, Raytheon played a decisive role both by helping in the Centrale operation through a shareholder agreement which committed the American company more actively in the Sicilian enterprise and by increasing its direct participation in the company to 30 per cent of the stock.

In fact, on 21 November 1961, after subscription to the second increase in capital stock mentioned above, shareholding was as follows:

70 per cent equal to 1,400 million lire — La Centrale
30 per cent equal to 600 million lire — Raytheon Company.

These capital increases were used to boost production capacity of the existing lines, to build new plant next to the first one for the production of germanium transistors and silicon rectifiers, to install centralised facilities for the distribution of fluids, gas and power to both the new and old lines and to create chemical, metallurgical and electric measurements laboratories such as to allow a higher technical capability for the entire company.

At the same time, after carrying out some pilot work in ELSI, it was decided to get into the manufacture of black and white TV picture tubes. Since Raytheon was not operating in this particular field, La Centrale contacted, through Raytheon, Thomas Electronics of Passaic, NJ, USA, a company specifically engaged in the production of cathode ray tubes. With Thomas Electronics it was decided:

1. To set up a company under the name of Societa Elettronica Italiana p.A. — Selit, for the purpose of manufacturing cathode ray tubes in Palermo. The capital of 300 million lire was 70 per cent La Centrale and 30 per cent Thomas Electronics (deed 7205, Vol. 874, dated January 5, 1959, under the hand and seal of Vito Di Giovanni, Notary Public).
2. Thomas Electronics would enter into a regular license agreement with Selit for the use of Thomas patents and know-how for the manufacture of cathode ray tubes.
3. Selit by regular contract would entrust the entire administration of its operation to ELSI. Therefore, the activities of ELSI and Selit were de facto a single industrial activity.

Production of semiconductors in ELSI and cathode ray tubes in Selit began early in 1960. Total personnel had meanwhile increased to 530 units as a function of these new investments. The technicians originally imported from the North had terminated their arrangements, and with a few exceptions the entire operation was being conducted by local people.

This new situation gave evidence of the following facts during the year immediately after:

1. A large number of factory girls was added to the male labour force, and the girls also gave good results on completion of their training period. However, the cost of training large numbers was extremely high, and no local financial aid was obtained.
2. The European market, in spite of the difficulties reported below, has been capable of absorbing in the desired quantities the products included in the ELSI and Selit operational programs. The statement is proved by the con-

stantly increasing sales volume: about 200 million lire in 1957; 350 in 1958; 800 in 1959; 1,900 in 1960; 2,700 in 1961 and 3,050 in 1962. Meanwhile, however, changing market pressures were being felt. For example the average unit sales prices of picture tubes and semiconductors started an appreciable downward trend on the entire European market.

3. Not only the technical and production start-up costs were high, as stated, but also the creation of a wide and stable market was very costly, both directly and indirectly. Furthermore, it appeared ever more evident that the electronic field not only technically but commercially as well was a very difficult field, where a great experience was needed to operate correctly.
4. Both in Italy and abroad all major customers, that is, the most stable and interesting ones, were reluctant to grant us constructive confidence as long as we appeared like a small company with no real technical strength behind us. We had to be substantially tied to a group which was really significant in world electronics.

In order to render easier the solution of these problems and since La Centrale, owing to its position, had no particular possibility of helping ELSI solve its problems listed above, La Centrale and Raytheon decided to:

1. Transfer ownership of the majority of the corporate shares from La Centrale to Raytheon by Raytheon's subscription to the major part of the capital increase resolved to handle the increased volume of business and the consequent need to expand the facilities. On 4.25.63 the capital stock was consequently increased by 2,300 million lire, Raytheon subscribing to 1,980 million and La Centrale to 320 million. Raytheon now owned 60 per cent of the capital stock and La Centrale 40 per cent (directly or through affiliated companies). Therefore, in practice, Raytheon continued even more to increase its commitment to bring the Sicilian electronic initiative to success.
2. To change the name of ELSI into Raytheon-ELSI S.p.A.
3. To buy out all the Selit shares as actually to unite the two operations — first de facto (7.31.62) and later (3.30.65) legally through a merger — in order to make them economically and industrially sounder. Thomas had meanwhile ceased its activity in the TV field in the USA.

Raytheon-ELSI S.p.A. (hereinafter called RE) now under Raytheon's control and drive, rapidly multiplied its facilities, its personnel (in 1964 it was increased to about 1,110 people) and its sales (5,200 million lire in 1963; 6,700 in 1964; 8,500 in 1965).

However, the large increase in sales must not lead one to believe that the conquest was an easy one, nor that that meant the attainment of an economic equilibrium for the Company.

We must consider at this point that RE's European competitors were, and are, large groups such as Philips (Holland), Telefunken and Siemens (Germany), Thomson Houston (France), etc. All of them not only had a long industrial experience behind them, but had also begun operating several years before us in our specific products such as CRT and semiconductors.

During the period 1958-1964 they were consequently able to achieve great progress not only in product quality, but principally in cost reduction. As an exemplification let us point out that as a result of cost-reduction unit prices during the period 1958-1964 were cut down to 50 per cent for cathode ray tubes and to one-third for semiconductors. The effort of RE, still a young company with no experience, to follow this market trend was naturally tremendous. With Raytheon's substantial help we can state that the production capacity of the lines increased adequately, but the increase in cost of manpower, particularly high in Sicily during those years, and the trend in the cost of materials, did not make it possible to offset the price cuts. To explain these results we must take into account also that the incidence of fixed costs, including the very high volume of interest expense, is particularly high in RE as the Company engages only in the manufacture of technically very sophisticated products having a relatively modest market area, with the exception of cathode ray tubes.

Therefore, it became mandatory to start drawing up a program to add to the old products other technically less difficult products showing greater market stability.

In order to improve the financial position of the Company and since Raytheon had meanwhile acknowledged that the start-up costs reported on the balance sheet as losses or as capitalized expenditures and offset by both the operating capability acquired by the personnel and the possession of a market won over with so much effort amounted to a figure practically equal to or larger than the capital stock, Raytheon proposed to La Centrale the devaluation and subsequent reconstitution of the entire capital. However, since La Centrale, now the minority stockholder, as stated above, was not much committed to the operation, it was possible to reach only an agreement for a devaluation of the capital by 2,300 million lire and to postpone any further devaluation to some other time. At the same time it was decided to increase the capital again by 2,000 million lire entirely subscribed to by Raytheon, so that on 4.28.65 the capital stock was divided as follows:

Raytheon	80%	3,200 million lire
La Centrale and wholly owned companies	20%	800 million lire

From then on the situation has evolved as follows:

1. The increment of finished goods to stores per person which practically doubled from 1963 to 1966, proved not only the efficiency of the facilities installed but also, and principally, that the factory personnel had attained an excellent efficiency level. In other words, it proved that in Sicily it was actually possible to manufacture goods with a high direct labour content. On the other hand, it is necessary to point out that today the cost of the personnel, brought up to the level of skilled manpower with a heavy investment borne by the company costs the same as, or more than, what it would in North Italy (whereas some years ago the difference was strongly in favour of the South) since in order to prevent too high a personnel turnover and discourage emigration wages must be kept at a good level. For that reason it is believed that there must be adequate aid to favour personnel training.
2. On account of the impossibility of importing medium and high level engineering skill from North Italy or abroad (there is shortage of engineering personnel all over the world) the only possible solution was to hire and train local people. A large number have been hired (more than 50 University graduates) and they have been assigned to the different operations. Of course, the development of personnel to maturity has been a slow process, since we had no easy products with which to break in the personnel.
3. An investigation of the evolution of market conditions has demonstrated:
   - *(a)* The products for military usage are interesting because they allow — as avant-garde products — an economic introduction of the most advanced techniques into the company. Their advantages, however, are offset by

the fact that the market is discontinuous and, therefore, cannot constitute a correct exclusive operating basis.

(*b*) The products for the consumer market, and in particular for the entertainment market, such as cathode ray tubes and semiconductors for radio and TV, etc., are of interest because the overall sales volume is sizeable, but neither can they be taken as a basis of such an industrial operation, since the absorption capacity of the market, in addition to being uneven throughout the year, is also strongly affected by the economic situations of the different markets. Furthermore, the constant fight imposed by price trends makes essential an allocation of the fixed expenses over a wide and more stable basis, that is, including other products made and sold.

Products having marketing and price characteristics like those governing the sales of cathode ray tubes must represent not too high a percentage of the entire billing in order not to constitute a serious risk, if they are made in industries where it is very difficult to lay off personnel even temporarily, such as in Italy in general and in Sicily in particular. Within limits percentage-wise correct they will constitute, instead, an appreciable contribution. For the cathode ray tubes made in Palermo we must finally remember the heavy costs incurred to deliver the product to the customer's factory. In function of this burden, even though the products are competitive and are welcomed in foreign countries for quality and commercial reasons, the prices that may be obtained in distant countries are often not economically satisfactory for us once we detract transportation costs, customs, etc.

Raytheon-ELSI today exports over 50 per cent of its total sales volume. Although this obviously helps the balance of payments problem it does not always help the profit situation. Because of this, without some form of Government help it is advisable to make plans for narrower sales bases, that is, to consider selling only when you can actually get an adequate profit from the sale.

For the cathode ray tubes, finally, we must remember the problem of the advent of colour TV. The subject will be dealt with in more detail in the fourth chapter of this report.

The foregoing has made it possible to calculate with sufficient precision the trends in quantity, value and economic return that we can reasonably expect to have not only this year but in the following years as well. These data show:

(*a*) In consideration of the increased productivity and of the market situation, RE presently has too much personnel, if only the products presently made are taken into account.

(*b*) Personnel training has really cost the company a great deal and therefore, not only for social reasons but also in order not to lose the investment made, it is in RE's interest not to cut down its personnel but to find a way of using it in an economically justified manner.

(*c*) RE's industrial capability in terms of its facilities, technical capability, personnel efficiency and market position acquired is today a concrete positive reality, which only needs to be better exploited in order to yield a benefit.

(*d*) To make the best use of the potential capability existing in RE today it is necessary to introduce the manufacture of new products with appropriate techno-economic characteristics to complement the present product range. That way also, these new products, through an allocation of the fixed costs over a wider base, can economically show a yield commensurate with their potential.

(e) The now fairly long life lived by RE in Sicily and the experience derived therefrom together with what the European market for our products has taught during these years enable us to state that this complementation of new and old products is the thing that can give not only economic satisfaction to the stockholders but with the additions of new jobs also further increase the Company's social value.

In order to assert these aspects the following measures were taken during these latest months:

1. Raytheon decided to buy the entire RE stock so as to be able to more freely adopt the measures necessary for a definite reorganisation of the company.
2. The capital stock was devalued by 2,500 million lire at the closure of the balance sheet for the fiscal year 10.1.65-9.30.66 and it was then recapitalized for an equal amount entirely subscribed by Raytheon. The relative resolutions were approved in the special Stockholders' Meeting of 31 March.
3. A plan is to be drawn up to complement the company's activity with new products responding to the technical requirements and characteristics demanded by the market. We shall talk about this plan later.
4. Agreements will be sought for a participation in the capital stock of RE by others so as to permit the implementation of the programs studied and better insert RE in the Italian economic, political and industrial world. It must be borne in mind that while, through Raytheon, RE has actually succeeded in attaining on the European market that technical stature from its own capability and by being closely related to so strong a group this technical strength, however, is not complemented with a similar industrial political strength in Italy — which is essential — on account of the lack of efficient and influent economic and industrial ties.
5. Following points 3 and 4 above another plan is to be drawn up for the conversion of the personnel presently in excess in order to use it for the manufacture of the new products foreseen.

CHAPTER 3

PRESENT CAPABILITY OF RAYTHEON-ELSI

Present Products

Before going into the personnel structure, the situation of the present investments, RE's present position on the market and our company's general technical position today, we believe we should give a more analytical idea of the products presently made in RE in order to make it easier to understand what is to follow.

Microwave Tubes

They are tubes capable of generating electromagnetic oscillations at very high frequencies (wave lengths from 30 cm down) in both the types utilizing the joint action of electric and magnetic fields (magnetrons), and those utilizing the action of electric fields only (klystrons).

Applications range from particular military uses (identification of fast objects in the sky and guidance of other objects against them) to military and civilian radars, telecommunications with microwave radio bridges, industrial microwave heating.

RE has two production lines for these tubes; one (the "white line") for the production of particularly difficult classified military tubes, the other (the "grey line") for all the other types. The entire production capacity in terms of lire is about 180 to 200 million per month at sales value, working one shift in all operations except exhaust, which for technological reasons is always planned on a three shift basis.

X-ray Tubes

They are tubes capable of generating X-ray radiations if they have adequate high voltage power supply. We engage in tubes for medical application in particular. Our end users are the radiologists. We manufacture both the conventional stationary anode tubes for radioscopy and X-ray photography and the more modern rotating anode tubes. Both are supplied with their necessary accessories such as oil-insulated housings, high voltage cables, starters, exposure meters, etc. Our present range of tubes covers all the requirements of the radiologists. The line has a production capacity equal to a monthly sales volume of 50 to 60 million lire, working one shift a day.

We have customer service stations for maintenance and technical assistance in Rome and Milan.

Telephone Surge Arresters

They are particular discharge tubes in rarefied gas suitable for eliminating overvoltages in telephone lines. They are used to protect telephone lines, cables and terminal equipment. They are made according to a patent owned by RE. The capacity of the line in sales value is about 15 to 20 million lire a month, working one shift a day.

Semiconductors

We have practically terminated recently the production of germanium transistors since this product has become technically obsolete, as had been foreseen. Today we engage essentially in silicon rectifiers. These are devices that, appropriately inserted in a.c. circuits, convert the current into d.c. with a conversion efficiency particularly high and stable in time (unlike the systems previously used) with the additional advantage of protecting from overvoltages the entire equipment using our rectifiers.

We make low, medium and high voltage rectifiers, the latter constituting an element of particular commercial interest. Applications are manifold. For exemplification let us point out that in addition to the use of at least two rectifiers in each TV set, they are used in d.c. power supplies for radar, telecommunications, household appliances, battery chargers. High voltage rectifiers are used in X-ray equipment, radio and TV stations, electrostatic filters, domestic appliances, etc.

The production capacity of the line is worth about 150 million lire a month in sales, working a single shift a day.

Cathode Ray Tubes

They are the normal TV picture tubes. They are the most difficult item of the TV set to make. We buy the glass in the format desired and perform all the other operations required to change it into a cathode ray tube including the manufacture of all the parts of electronic optics to arrive at the formation of the image.

Our production covers the entire range of black and white tubes, from the very small 11" tubes to the 25", the largest on the market today. The tube is normally sold already provided with anti-implosion characteristics by means of special protection systems.

Production capacity today is more than 2,100 tubes a day in three shifts, which amounts to about 550 million lire of sales a month. The line is automated with conveyors to handle all in line transportation of the tubes.

The products detailed above are manufactured and sold with the following means:

Personnel

RE's personnel was composed as follows on 1 April 1967:

Executives	19
Consultants	4
Office Employees	232
Special Category Employees	50
Factory Workers	737
	1,042

Of these 1,042 units, 1,005 work in Palermo, 37 are located in the sales and customer service offices in Rome, Milan, Paris, Frankfurt, etc. There are 42 engineers, 8 graduates in chemistry and physics, 8 graduates in economics and trade, 5 in law, 21 are bookkeepers and 27 non-graduate engineers.

Such a large force of University and high school graduates, equal to 1.06 per cent of the total, is naturally due to the type of work in which the company engages. It is worth pointing out here that 95 of these persons with particular responsibilities were hired in Palermo, practically all with no previous industrial experience, and they have been entirely trained to take over the responsibilities they now hold.

Distribution by type of work is as follows:

Production:		
Microwaves	95	
X-rays	30	
Surge Arresters	20	
Machine Shop	52	
Semiconductors	182	
Picture Tubes	341	
Total		720
General Factory Services:		
Maintenance and centralized services	89	
Materials Management	40	
Total		129

Technical Management:		
Quality Control	40	
Laboratory	13	
Total		53
Sales		33
Administration		39
Industrial Relations		26
Management		19
Executives		19
Consultants		4
Grand total		1,042

Since, as we have repeatedly pointed out in the preceding paragraphs, nearly all the people on RE's payroll today have been hired locally and with very little or no previous industrial experience, the effort made to prepare each one for his responsibilities appears clear from the very distribution of the people in the different specialized work fields. Today we can reasonably state that our Palermo manpower has reached the point of being able to work effectively in the different specialized lines to which they have been assigned.

It is equally clear that if it had been possible to begin with personnel already totally trained, it would have been possible to turn out the same quantity of goods with much less personnel. During the long training period we had to make up — both in direct and indirect labor — with more people for the temporary lesser capability of the same people. This is one of the reasons for the excess personnel today compared to the actual sales potential.

Works discipline, absenteeism within limits quite normal, relatively low turnover, all prove that the industrial education of the personnel is efficient. The relationships between Management and Personnel, guided by a truly efficient and modern Industrial Relations Service, are normally good and constructive.

The work relations are based on the National Labor Contract for the category "Manufacturers of electric bulbs, electron tubes, fluorescent tubes and thermostatic equipment".

The seven member factory committee is composed as follows:

	Office Workers	*Factory Workers*
CISL (Chr. Democrats)	1	3
CGIL (Communists)		2
UIL (Moderate Left)		1

Facilities and Equipment

An appropriate appendix reports the essential data of all our technical equipment. Here we believe it useful only to set down the size of the investment divided by types and use as well as the depreciation made through 9.30.66.

This really sizeable volume of investments has enabled RE today not only to manufacture all its products at competitive unit times, but also to control the quality of all the materials used, the manufacturing processes and the finished goods in a laboratory, and with means truly complete and modern. Only these investments have made possible the quality attained.

The equipments are largely of USA origin, and they are equal to the parent company's best. Others have been made in Italy on Raytheon designs and specifications. Many of the more classified equipments have been built in RE itself.

The efficiency of the equipment is maintained by an appropriate preventive maintenance service which guarantees complete efficiency at all times.

RAYTHEON-ELSI

(Figures are in millions of Lire)

Detailed List of Facilities and Equipment by Product Line

(Actual for period October 1965-September 1966)

	Land	*Buildings*	*Facilities and Mach*	*Ovens*	*Equipment*	*Instruments*	*Electro Cells*	*Auxil. Equipment*	*Furniture and Fixtures*	*Vehicles*	*Total*	*Work in Process*
Capital Items:												
Color TV Operation	–	–	–	–	–	–	–	–	–	–	–	124.4
Microwave Line	–	70.3	710.6	151.9	64.3	143.3	10.9	–	11.7	–	1163.0	46.0
X-ray Line	–	16.1	307.6	55.2	18.3	30.3	–	–	10.5	–	438.8	20.1
Surge Arresters	–	15.9	94.8	8.0	4.6	39.5	–	–	5.5	–	168.3	37.8
Semiconductors	–	69.0	809.4	46.8	10.2	24.2	16.0	–	18.6	–	994.2	105.8
C.R.T.	–	252.3	1611.3	117.2	47.4	4.3	–	–	23.1	23.0	2078.6	90.0
Machine Shop	–	12.9	105.9	–	4.6	2.1	0.4	–	3.4	–	129.3	4.2
Plant Maintenance	–	145.5	990.0	1.9	1.0	1.8	0.6	–	1.9	–	1142.7	26.7
Central Lab.	–	8.1	47.5	–	1.5	10.1	–	–	2.0	–	69.2	1.7
Materials Manager	–	123.6	32.3	–	4.2	–	–	–	22.0	–	184.1	0.9
Quality Control	–	34.4	227.7	–	1.5	67.5	–	–	6.4	–	337.5	2.8
General Manager	–	18.1	19.7	–	0.1	–	–	–	16.3	7.3	61.5	12.2
Administration	–	29.8	0.6	–	–	–	–	–	26.4	–	56.8	0.7
Industrial Relations	–	58.5	22.8	–	1.6	–	–	9.4	5.2	–	97.5	0.7
Sales	–	–	2.4	–	5.0	10.1	–	–	25.6	–	43.1	2.0
X-ray — Sales	–	–	23.1	–	–	–	–	–	–	–	23.1	–
Tax Adjustments	–	–	69.0	28.0	–	–	–	3.0	–	–	100.0	–
Total	166.9	856.5	5074.7	409.0	164.3	333.2	27.9	12.4	178.6	30.3	7253.8	478.0
Depreciation												
at 9/30/65	–	(80.8)	(885.4)	(100.3)	(62.8)	(173.4)	(12.2)	(4.1)	(49.9)	(14.4)	(1383.3)	–
from 1/10/65 to 9/30/66	–	(25.7)	(404.2)	(38.5)	(41.0)	(22.8)	(3.6)	(1.2)	(17.9)	(6.0)	(360.9)	–
Total	–	(106.5)	(1289.6)	(138.8)	(103.8)	(196.2)	(15.8)	(5.3)	(67.8)	(20.4)	(1944.2)	–
Net Balance at 9/30/66	166.9	750.0	3,785.1	270.2	60.5	137.0	12.1	7.1	110.8	9.9	5309.6	478.0

Markets

The very nature of the products made in RE has made it mandatory to expand sales towards very wide markets including not only Europe, but for some products other continents as well. Therefore, the organisation has had to take into account the geographic area of the market as well as the nature of our products having technical and application characteristics totally different from one another. Consequently, we have created a two-fold structure. One is by geographic areas with the task of actually following the market and distribution problems for all products and the contacts with customers. But every time negotiations warrant it, these contacts are pursued by the second structure arranged by product specialization and, therefore, much more competent technically.

The geographic areas are as follows:

Italy — with headquarters in Milan;
Spain, France, Belgium, Holland — with headquarters in Paris;
Germany, Switzerland, Scandinavian countries — with headquarters in Frankfurt;
USA — through Raytheon Company;
Iron Curtain countries
Mediterannean countries } with headquarters in Palermo.
South America

The results of this organization may be summed up as follows:

Sales during the last two corporate years were 8,493 and 8,226 million lire, respectively.

Of the total of these two years exports amounted to:

1,257 million lire	Germany
921 million lire	Spain
676 million lire	USA
551 million lire	France
276 million lire	Switzerland
266 million lire	Yugoslavia
157 million lire	Japan
122 million lire	Benelux
110 million lire	Sweden

Exports totalling less than 100 million lire were as follows:

> 88 million Norway; 87 Denmark; 77 Finland; 54 Iron Curtain countries; 42 United Kingdom; 33 Canada; 40 Argentina; and then come Brazil, Greece, Israel, South Africa, etc.

The exports listed above totalling 4,817 million lire altogether exclude goods sold to Nato. For several reasons these have been included under Italian sales, even though the goods actually went abroad.

Sales by product were as follows:

Cathode ray tubes	3,207 million lire
Microwave tubes	816 million lire
Semiconductors	633 million lire
X-ray tubes	95 million lire
Surge arresters	35 million lire
Miscellaneous	29 million lire
Total	4,817 million lire

To give an idea of the importance of each one of the different product lines, it is pointed out that in the figure of 8,226 million lire for the last fiscal year inclusive of both domestic and foreign sales the different product families accounted for the following amounts:

Microwave tubes	1,785.6 million lire
X-ray tubes	520.1 million lire
Surge arresters	188.3 million lire
Semiconductors	846.5 million lire
Cathode ray tubes	4,813.8 million lire
USA and other products	87.0 million lire
Total	8,242.0 million lire

At this point we must remember what is said elsewhere regarding the market characteristics of each product and the orientations that RE has drawn from them to plan its future. Here we have just wanted to establish with actual figures the position attained by RE on the European market to prove the validity of the action.

Raytheon ELSI's Present Capacity to Operate Industrially

Now that we have seen RE's current basic products, the actual personnel and investments used to make them, where and how they are marketed, let us see what technical and administrative capacity the company has today.

Let us start with the technical capabilities. When we reported RE's history in the preceding chapter of this report, we explained how one of the main defects up to the year 1962/63 was our inability to do anything but to copy our licensors' products with no capability of our own to make new types. With the work performed in these last years the situation is now substantially changed.

Of course, it is obvious that the basic studies cannot but be conducted by groups much larger than we are. For this reason we continue to get them from Raytheon. Today, starting from these basic studies, we are really capable of giving our products the technical forms and features required by the European market, which is, as already stated, substantially different at times from the USA market.

In particular, for instance, we shall list in the microwave tubes field the low noise tunable klystrons for missile guidance such as the QK1102, which is now mass produced only by us, the magnetrons 7008, ES110 and ES115 developed by us with our own designs and studies. In semiconductors we make avalanche controlled rectifier elements studied and manufactured entirely in Palermo. The same goes for the high voltage stacks and the plastic diodes.

In the cathode ray tubes line we have been doing our own engineering for the past four years approximately, and under these conditions we have succeeded recently to be the first to put the square 17" tube on the market (last year we were successful in putting out the 12" tube). We are the first to patent and put on the market an integral implosion protected system with a metal band, which permits mounting of the tube in overhang, a thing much desired by TV makers.

Our technical position on the market is such that even recently we have been requested by Romania and by Egypt to present a bid to set up in those countries cathode ray tubes plants of our design and license. From Spain we have been asked for a license for the use of our protection system.

The previously mentioned difficulty of getting good foreign engineering skill to come to Palermo and the long time required to train local people are the factors limiting further expansion of our engineering work. But RE unquestionably has the basic technical framework today to operate its present lines in a dynamically correct fashion.

With regard to administration capacity, the economic and financial control today is organised in the following manner:

1. General and cost accounting together with an IBM center for the elaboration of data.
2. Offices to draw up and control budgets and forecasts.
3. Materials Management with full responsibility for all inventories and purchasing.
4. Import-Export office.
5. Cashier.

Cost control is done for the past regarding direct costs with the product standard cost system.

Control of indirect costs is done by comparing budget-forecast with actual.

This system now puts our engineering staff in a position to be more sensitive to the economics of the company and thus be able actually to appreciate in a unitary manner the entire techno-economic problems of production.

Until a relatively short time ago the size of the technical, scientific and technological problems had hardly allowed time for this synthesis.

From the actual data thus obtained and through the work of a Times and Methods Office recently set up it is possible to draw up cost estimates such as to enable the making of economically correct decisions for the marketing of our products and consequently generating the best possible sales policy.

CHAPTER 4

OUTLINE OF FUTURE NEW PRODUCTS

Present Situation

It has already been indicated in previous chapters that the present range of products are beginning to come under significant market pressures. Even though the sales output has been doubled in the last four years with the same labour force the reduction in prices in such lines as CRT's and semiconductors has more than offset this increase in productivity. Without additional help being provided both from Raytheon and from Italian Government agencies then the annual sales turnover of the present product ranges cannot do anything but decrease. This is particularly so in the case of the cathode ray tube line where the advent of colour television in a few years' time will have a very significant effect indeed. To avoid this, it is necessary that this CRT line is regarded as part of the black and white tube production facilities in Italy and linked in on a national basis whatever colour tube production facilities are created. It would certainly be quite uneconomic to try to extend this line and create a colour tube facility in Palermo.

This justifies further explanation. In the first place our aim with new products is to find those with a more stable market background. To increase the capability in picture tubes which is highly consumer oriented is quite contrary to this new philosophy. Secondly, the investment required for a successful and economic colour tube manufacturing unit is extremely high — it is certainly somewhere between 6 to 12 million lire. For very many years the Italian market can really only justify one such unit — for the next two or three years even this is not really economic — and the total national interests will almost certainly not be in favour of having such a unit in Palermo.

The overall effect on the sales turnover and hence the number of employees for Raytheon ELSI totally without additional help both from Raytheon and Italian Government agencies, has been indicated in the financial chapter, No. 6.

Possible New Product Areas

The new products that ought to be fed into Palermo are required to meet two basic requirements. One of these is that they should link in with stable markets and the second is that they will provide opportunities for the use of the local Palermo labour without having to import large numbers of highly skilled engineers and other professional experts. It must be emphasized that there is a world shortage of such highly skilled professional people, and that even in places such as Rome, London and New York the demand exceeds the supply. The probability of obtaining such people in sufficient numbers in Palermo is just too low to be used as a basis for further expansion.

This means that we can look for new products in three areas. The first one of these relates to the areas of activity to which ELSI is already committed and certainly Raytheon can provide additional support in these product lines. The introduction of other new products must be in addition to and not in replacement of the present product ranges which must remain as the basic raison d'être of the company. With the additional resources of ESPI available then those in the second area can be supplied by Raytheon to link Palermo more closely into the Raytheon Europe Organisations. Under these circumstances, and for certain product lines, ELSI can be regarded as the main manufacturing centre for the marketing activities of Raytheon Europe in the EEC countries. Also, there would not only be engineering support from the Raytheon parent company in the United States, but also from other Raytheon engineering groups in other countries of Europe.

This presupposes of course that government subsidies will be available to cover the additional transport costs, not only for incoming material but for export of completed goods to other countries. It must be borne in mind that most national exporting activities are encouraged and undertaken with a view to helping with balance of payments problems and often turn out to be very much less profitable than sales into home markets.

The third possible group, which should certainly represent the major build up of new products, could come from government-owned agencies in Italy. Raytheon on its own could not regard this as an acceptably possible basis for expansion but with ESPI and Regional Government support there must be much greater opportunities for successfully arranging this. As an example, a large part of the communications equipment for the Italian PTT and the Concessionary Companies is manufactured by IRI Companies. We would guess that something like Lit. 20 billion worth of equipment is manufactured by private companies. There is certainly every reason why future telephone switching equipment and other communications equipment for use in Sicily and Southern Italy could and should be made in Sicily in Raytheon ELSI. This would represent just the sort of assembly work which would suit the Raytheon ELSI environment and would also represent a very stable market. Any fluctuations in this market could be ironed out by controlling the orders placed on the privately owned companies.

Possible specific products in the three groups outlined above are now detailed below with appropriate comments:

First Group — Raytheon/Government Help for Present Lines

Semiconductors

1. Possible introduction of plastic encapsulated "in line" integrated circuits as a key part of both the Raytheon Europe and the Raytheon world-wide plans for integrated circuits.

   This would mean assembly and test and the provision of integrated circuits for the European market and for resale back in the USA.
2. Introduce the range of silicon-controlled rectifiers available from Transistor AG Zurich using ELSI as the main production source for the EEC countries.
3. Consider the introduction of a line of zener diodes manufactured at ELSI for sale in EEC countries.

   Regard ELSI as the main manufacture, assembly and test facility for all Raytheon Europe semiconductor activities.

X-Ray Tubes

Maintain present sales levels by closer co-operation with either Machlett US (a Raytheon Company) or Machlett companies in Europe so that required engineering can be reduced and tube types made interchangeable on a world-wide basis.

Microwave Power Tubes

Use ELSI more as part of a Raytheon world-wide manufacturing and marketing activity. This would make available to ELSI wider European markets with Raytheon's support.

Cathode Ray Tube Line

Use Regional Government support in order to contact the Central Government so that the Raytheon CRT line can be regarded as part of the Italian national production capability in black and white tubes. This would be part of an overall plan where colour tube manufacture is undertaken elsewhere.

Second Group — Raytheon New Products

1. Modules

It will be possible to provide a fairly steady load of work for assembly of modules and sub-assemblies which will be fed into other Raytheon plants world wide. The first order along these lines has been received and is being executed. This first order will keep 40 operators busy for something like four months.

2. Power Supplies

Sorensen — a Raytheon company in the US — is a major manufacturer and supplier of power supplies in the US. Embryo activities in these lines already exist in Sorensen France and in Sorensen-Ard AG Zurich. It is the intention of Raytheon Europe to vigorously exploit this product line and Raytheon ELSI could be regarded as the manufacturing centre for the EEC countries.

3. *Test Equipment*

This is another area which Raytheon Europe intends vigorously to exploit. There is a line of Cossor oscilloscopes which is already selling in France and Germany. Cossor also have a range of Ramp Test Equipment for the checking of various aircraft installations and it is planned to expand into a range of general-purpose test equipment. All of these products could be fed into ELSI as an EEC production source, supported by engineering and marketing expertise elsewhere in Raytheon Europe.

4. *Digital Display Equipment*

Elsewhere in Raytheon Europe some of the digital display equipments originally designed by Raytheon in the US are being actively exploited. Potentially quite large markets exist for this equipment. In the UK, Raytheon Europe is being successful in obtaining OEM agreements with computer manufacturers, and with Government backing there is no reason why similar arrangements should not be made in Italy.

Third Group — Italian Government New Products

1. A whole line of possible products exists in this area, such as:

— Subscribers hand sets;
— Parts of telephone switching equipment such as relays and electromechanical assemblies;
— Large racks or sub-racks of telephone switching equipment;
— Transmission equipment mainly multiplex, for terminal use;
— Microwave link equipment for transmission.

In these areas which are dominated by government-owned organisations it should be possible eventually to build up a level of something like Lit. 10 billion a year. This alone would enable continued expansion even beyond the level given in the plan and would double the present size of ELSI. At this level with co-operation from the government agencies who are the customers, the PTT and the Concessionary Companies, it would be possible to have an extremely stable market.

2. *Aviation Products*

The Raytheon Group in Raytheon Europe, mainly the Cossor Company in the UK, has a very successful line of airborne transponders for secondary surveillance radar use for both military and civil applications. There ought to be a significant demand for such equipment from both the Italian Airforce and civilian airlines. It has not yet been possible to do any reasonable market survey but if the market does exist it could provide a reasonably stable demand for a good number of years.

The financial plans given in Chapter 7 envisage that only some of these products are exploited and that they are certainly not exploited simultaneously. Detailed market analyses, availability of training facilities with the necessary Regional Government support and other factors such as capital investment allowances and support for transport costs will determine which products are utilized to meet the planned growth pattern.

CHAPTER 5

FINANCIAL HISTORY TO DATE

The financial history of Raytheon ELSI S.p.A. covers a span of more than 10 years beginning with its formation on 18 May 1954.

In order to better view the financial past it has been divided into the following parts, even at the risk of repeating events and transactions which have already been mentioned in other parts of this report.

Part A. Capital Structure History
Part B. Phase I — Financial Performance (1954-1961)
Part C. Phase II — Financial Performance (1962-1966)
Part D. Comments on Current Performance.

Attached to this report are the following schedules which will be referred to in the contents of the history:

Appendix B1 + 3. Balance Sheets from 1956 to 1966
Appendix B2. Income Statements from 1956 to 1966
Appendix B4. Product Sales and Headcounts from 1957 to 1966.

Part A

Capital Structure History

Elettronica Sicula S.p.A. (ELSI), with headquarters in Palermo, Sicily, *was formed as a capital stock company on 18 May 1954.* The paid-in capital amounted to 1 million Lire equal to 1,000 nominative common shares each having a par value of 1,000 Lire. The scope of the Company was to manufacture, exclusively in Sicily, electrical, radio-electrical equipment, and general electronic and mechanical components.

For purposes of continuity of significant events, the event date is listed on the left hand margin of this report.

As of 30 November 1961, the capital stock of the Company was composed and owned as follows. The par value of such capital stock was Lit. 1 billion, of which 70 per cent was owned by La Centrale and 30 per cent by Raytheon Company.

30 November 1961

The Company issued 1 million new common shares each having a par value of 1,000 Lire. La Centrale subscribed to 700,000 shares and remainder was taken by Raytheon Company. At this point, La Centrale maintained its 70 per cent majority interest in the Company.

31 July 1962

Raytheon ELSI acquired 100 per cent the capital stock of SELIT S.p.A., a manufacturer of Cathode Ray Tubes for television use which had a capital stock of 300 million Lire and was formerly owned 70 per cent by La Centrale and 30 per cent by Thomas Electronics of the USA.

25 April 1963

The Company issued 2,300,000 new common shares each having a par value of 1,000 Lire and was subscribed to by Raytheon Company for 1,980,000 shares and La Centrale (or affiliates) for 320,000 shares. With this transaction, Raytheon

Company became the majority stockholder in Raytheon ELSI owning 60 per cent of the capital stock.

On the same date, Selit issued 1 million new shares at par value of 1,000 Lire for each share and the issue was totally subscribed to by Raytheon ELSI.

30 June 1964

To cover past operating losses, the capital stock of Raytheon ELSI was devaluated by 2,300,000,000 Lire. On the same date it was resolved to recall the entire capital stock and re-issue it to the shareholders on the same basis as held before but at a reduced number of shares equal to 2,000,000,000 Lire in capital to preserve the 1,000 per share of par value. Concurrently, the capital was increased by a new issue of 2 million shares which would be privileged in liquidation proceeds. The new issue was entirely subscribed to by Raytheon Company bringing their interest in Raytheon ELSI to 80 per cent.

30 September 1965

Selit S.p.A. was dissolved and absorbed as an operating division of Raytheon ELSI.

31 March 1967

To cover past operating losses, the capital stock of the Company was devaluated by 2,500,000,000 Lire. Raytheon Company on the same date, agreed to subscribe a new increase to restore the capital to its original value and the action is pending Government administrative clearance. Lit. 2.5 billion have meanwhile been paid in to ELSI to cover this increase. Concurrently, Raytheon Company moved to purchase the remaining shares held by La Centrale Group. This was accomplished on [illegible]4 April 1967.

Part B

The financial performance of Raytheon ELSI has been divided into three time periods, Phases 1, 2 and 3. Phase 1 covers what can be considered the period of industrial infancy while Phase 2, the adolescence period. Phase 3, the future, will be treated in a separate chapter of this report.

Phase 1 spans from the beginning of the Company until the end of 1961. This period, as can be noted from Appendices B1 and B2 depicts the organising of the Company, launching of products, and establishing of basic asset values for future conduct. Phase 1 also covers the period when ELSI and Selit were independent of each other and it was not until 1962 that, as was noted in the capital structure history, ELSI acquired its interest in Selit which significantly changed its balance-sheet position as well as creating a broader industrial complex.

For purposes of comparison, the combined financial performances of ELSI and Selit prior to 1962, indicates that product sales in this infancy period amounted to 6,463 million Lire while Phase 2 accounted for some 31,292 million Lire of product sales from inception through 30 September 1966. Other financial activities during the two periods reflect the same relationships: that is, an infancy period of asset value construction to serve the subsequent period of significant growth. The personnel count swelled from a mere 94 in 1957 to 895 units at the end of 1961. Thereafter the headcount did not increase in proportion to sales volume growth as the organisation became more skilled and technology advanced significantly permitting important productivity strides. Paid-in capital amounted to 1,850,000,000 Lire for ELSI + Selit and with a capital devaluation of 250 million Lire established stockholders' interests at 1,300,000,000 Lire in ELSI while Selit capital remained at 300 million Lire.

Long-term financing during this period amounted to 2,850,000,000 Lire for the two companies. These loans were granted at low-interest rates which were made available by IRFIS. Of the above amount borrowed, 1,400,000,000 Lire was for working capital while the difference was fiscal asset investments.

The combined operating results of the two companies during Phase 1 was a loss of 240,000,000 Lire, which during a period of industrial building, was held to be satisfactory.

Part C

Phase 2 of ELSI-Selit (now called Raytheon ELSI) marked the beginning of a vast sales expansion and included the introduction of a military supply contract to Nato for microwave tubes to be used in the Nato-Hawk program. Also during this period, the market penetration of the Cathode Ray Tube line reached significant limits, going from a 1961 sales volume of 1,871,000,000 Lire to 4,814,000,000 Lire in 1966.

Total sales showed a better than 25 per cent increase per year with the exception of 1966 which had a slight downturn mainly due to a reduction in deliveries on the military program to a lower but still stable basis.

Worker productivity increased substantially as a result of training skills and technological advances. This increase can be noted by comparing personnel count in 1962 to that of 1966 and the respective sales volume for those two years. Personnel count actually decreased by 51 units while sales turnover increased by 5,192,000,000 Lire.

Naturally, because of such an important increase in sales turnover, and because of the increase in cost per unit of the personnel, costs increased. The following table of indices indicates these rises, using 1962 as a base year.

	1962	*1963*	*1964**	*1965*	*1966*
Sales Product	100.0	172.3	225.0	282.3	273.2
Oper. Supp. + Serv.	100.0	111.0	86.5	132.0	116.5
Payroll	100.0	135.9	141.9	188.9	169.5
Shipping Costs	100.0	170.3	192.3	182.4	264.8
Royalties + Mgt. Fee	100.0	129.5	114.1	232.1	187.2
Depreciation	100.0	311.0	277.0	499.0	561.0
Interest	100.0	108.1	102.0	138.3	132.6
Amortizations	100.0	334.0	230.0	196.0	584.0
Other Costs	100.0	103.6	51.8	78.6	124.6

* 9 months due to change in fiscal year.

While costs, excluding materials, generally increased at a lower rate than the sales volume increase (excluding depreciation and amortization which in the base year of 1962 were not taken), it should be noted that during this period prices declined and in the case of the Cathode Ray Tubes, declined more than the savings in increased productivity. Against this background, material prices did not fall with the sales price declines but remained constant. In the Semiconductors product line a similar situation developed. These market situations were being felt in most electronic components markets by competitors as well as Raytheon ELSI. Whereas prior to 1962 price changes did not greatly affect the Company because it was busy establishing an industrial base in the resource sense of the word, price changes from 1962 onward began to be felt quite emphatically as this was a period of industrial adolescence for the Company, when it was through the use of its established or near-established assets it was moving forward into the market place. The actual sales volume growth in units, then, was much greater than that reflected in sales turnover increase, as this included price declines.

Thus a story of dramatic growth in industrial potential was contained by competitive market factors which in most cases negated the economic fruits of increased productivity. Not to be overlooked was the continual burden of financing costs which have historically plagued the Company.

The operating results of Phase 2 were not satisfactory and produced some 4,667,000,000 Lire of losses, partly due to losses arising out of activities conducted in Phase 1 (such as deferred cost amortizations and increased depreciation expense) and partly as a result of increased cost-price squeezes mentioned above.

During Phase 2, government assistance was given in the form of low-interest rates on some 3,500,000,000 Lire of new long-term loans.

Capital invested during the period amounted to 3,900,000,000 Lire while a devaluation of capital of 2,300,000,000 Lire was made in occasion of past losses.

In addition to aid in providing for further working capital, loans amounting to 4,230,000,000 Lire were guaranteed by the majority stockholder, Raytheon Company.

Thus, the Company experienced a significant but at the same time very costly industrial adolescence.

As a footnote to this period, the stockholders on 31 March 1967, voted for a devaluation of capital in the amount of 2,500,000,000 Lire to be used to absorb the accumulated losses of the past two fiscal years.

Part D

The Company's struggle to assume industrial maturity and stability still continues. Operating performance in 1967 reflects an increasing amount of market pressures both in terms of prices and a demand for updated technology in the products. Against these pressures, the Company faces further cost increases, particularly in the area of labor which is significantly dependent upon national trends. Dependence upon foreign sources of supply and the geographical location of the Company results in substantial custom duties and transport costs. Since the markets for the Company's products are outside Sicily and in effect away from the southern (Mezzogiorno) zone of Italy, increased efforts in market penetration will result in increased transportation costs, a factor most of the Company's competitors do not have to deal with in such magnitude.

An investment credit has been applied for under law of 26 June 1965 NHI, based on some of the installations and equipment recently acquired by the company but time must pass before such credit finds its way through the various administrative channels for approval and back to the Company.

Given the current product base, the current level of spending and the increasing adverse pressures mentioned above, heavy losses will continue and in all probability, increase. Hence the vital need for the future dramatic changes proposed.

CHAPTER 6

FUTURE FINANCIAL PLANS

Phase 3 of the life of Raytheon ELSI, that is, the next five years, is treated below in quantitative terms. As was stated in the closing paragraph of Chapter 5, the current product and people structure of Raytheon ELSI does not produce desirable economic results, and in fact, continued operation on the current basis is quite unsound.

With proper infusion of additional capital, new products and correct support of current products, the future of Raytheon ELSI can dramatically improve.

The five-year projections shown in Appendix C of this report reflect this change. Included in these projections are balance sheets, income statements, sales by product line, a source and application of funds, and an employment schedule.

It should be noted that the 1967 figures represent the present forecasts without taking account of the latest market pressures. These could reduce sales for the year by nearly one billion lire with a consequent increase in the loss for the year without taking drastic staff reduction measures.

Some of the more significant assumptions in the projections are listed below:

1. A capital investment of Lit. 6 billion in the second half of 1967.
2. New products, which will be provided by direct government assistance, will generate sales at the following rates:

1968	Lit. 300 million
1969	Lit. 900 million
1970	Lit. 1800 million
1971	Lit. 2200 million

3. Significant support will be given by Raytheon to existing product lines together with such factors as government directed procurements already permitted by policy and a joint link up with Italian colour TV program to preserve existing black and white Cathode Ray tube markets.
4. New products, which will be provided by Raytheon Company will generate sales at the following rate:

1967	Lit. 226 million
1968	Lit. 400 million
1969	Lit. 600 million
1970	Lit. 1200 million
1971	Lit. 1400 million

5. The new capital will be used principally to reduce the company's heavy debt and high interest costs. Annual interest charges should be reduced by approximately Lit. 450 million. As this capital will greatly improve the balance sheet position, it follows that the present need for loan guarantees by Raytheon will be eliminated. It is anticipated that additional interest savings can be obtained with the more favourable balance sheet position; however, this saving has not been reflected in the projections.
6. Training costs are to be covered by funds obtained through the Regional Government.
7. The new products and support for existing products should enable the company to increase sales from the 1967 indicated level of Lit. 8.5 billion to Lit. 12.5 billion in 1971.

8. The new sales level may be expected to support a total average employment in excess of 1,300 units in 1971. This is based on the not unreasonable assumption that the new products will have a ratio of 60 per cent direct material and 40 per cent direct labour. If the new products have a significantly smaller or higher proportion of direct labour, the estimated employment would change.
9. The financial projections include an annual charge for depreciation on new additions as well as present fixed assets, at the high rates used in the last preceding fiscal year. On the other hand, no amortizations of the past studies have been provided, nor have we assumed that new studies will be capitalized during this period. We can assume that the costs capitalized and costs amortized will approximately offset each other. With the proposed financial and product assistance and management effort by Raytheon, the present operating losses can be significantly reduced in 1968 and show a small profit in 1969 and further improvement thereafter. Given the current situation, the alternative to the proposal is steadily decreasing sales and employment estimated as follows:

	Sales	*Employment*
1968	Lit. 7950 million	743
1969	Lit. 6600 million	602
1970	Lit. 4900 million	464

Investments relative to the new products can be in part paid by the Government under its investment credit program (Law of 26th June, 1965, No. 717). This credit has not been reflected in the plan.

A further improvement in the operating results can be realized by government assistance on freight rates — provided by the aforementioned law. The company incurs an annual cost in excess of Lit. 250 million in shipping the finished product from a location that has a distinct disadvantage as compared with manufacturers in Northern Italy. This potential assistance has also not been reflected in the financial projections.

All above assumptions and projections are reflected in detail in the data in Appendix C.

CHAPTER 7

CONCLUSIONS AND REQUESTED ACTION

Looked at from a purely business point of view, the work force of ELSI related to its present market opportunities is excessive — it is excessive by over 300 people. Unless significant steps are taken as outlined in these proposals, then the only possible business decisions are to lay off these excess 300 people plus face a future when the markets for the present products dwindle and the level of employment that can be provided also dwindles. This situation is illustrated clearly in the figures given in Chapter 6.

As an alternative, however, a very promising expanding future is available if three conditions are met. These three conditions are:

(a) Additional capital of the order of 6 billion lire is put into the company.

(b) New products are fed in not only from Raytheon but also from Italian Government sources.

(c) Financial help is available for transport costs, capital investment and training.

This plan would enable the work force to be expanded from the present economic level of 750 total to 1,500 people total in five years, with a foreseeable continuing expansion. We have a clear choice between future contraction and future continuing expansion.

On the capital side, Raytheon have already invested some 8 billion lire — 2½ billion of this being during the last two months. Of the order of half of this, 4 billion lire, can be regarded as losses or as good will, whichever way one looks at it, representing the Raytheon investment in order to create the present capabilities as far as expertise, people and markets — including exports — are concerned.

Additional capital of the order of 6 billion lire will, as indicated in Chapter 6, provide a stable financing basis for the Company's operations and significantly reduce the very heavy interest charges.

Raytheon are not requesting that the 4 billion lire, which is effectively now only there as good will, is returned to them in any way, nor are they proposing to take any money back from their capital investment. They are also prepared to guarantee not to take out profits for a given number of years. The present par value of the Company can therefore be regarded as 4 billion lire and the cost of each share involved in the investment opportunity offered of 6 billion lire is effectively half of the cost to Raytheon of each of their shares.

Any possibility of later obtaining Central Government participation through an organisation such as IRI is worth exploring and would have Raytheon's whole-hearted agreement.

Raytheon can provide new products support to bolster the present product lines and to bring in new products which will meet the criteria required for this new plan. That is, to be able to make use of the good labour available in Sicily and to be related to reasonably stable markets. The main new product possibilities however which relate to significant long term growth can only be provided by Italian government agencies themselves.

Any new product will require training of labour, new capital investments and transport of materials and finished goods over very long distances, particularly for exports. It is therefore necessary after the intervention of ESPI, to make effective the laws governing financial help in these areas, from both the Regional Government and the Central Government, and to have them favourably interpreted.

As well as its investment to date Raytheon also has loan guarantees amounting to some 3.7 billion lire which will no longer be necessary or reasonable after the proposed recapitalization of the Company. There are other unsecured loans again totalling 8.8 billion lire which can also be reduced and re-arranged to lower the total interest charges to a level which is more appropriate to the re-financed Company.

It is simply not possible for Raytheon to continue to pour in such significant capital investments on its own and in fact it has to be clear that they cannot afford to do so.

If, on the other hand, Regional Government support is made available so that a plan similar to the one outlined can be operated, then Raytheon will vigorously support the proposals in every possible way, by continuing to give technical support, market support both from the US and Raytheon Europe, and Management support. There would be no suggestion of Raytheon withdrawing at all and in fact Raytheon would want to continue with some form of management contract.

It must be emphasised that as is indicated right at the beginning of this report, that it is relatively easy to provide the figures which relate to the present situation. The figures which relate to the future growth possibilities are obviously dependent on the rate at which new products can be fed into the Raytheon ELSI production capabilities and of course also depend on a reasonable profit margin being available with such products. This in turn is affected by any government financial support in the areas of training, transport, etc. The figures given are certainly within the capabilities of ELSI as far as training new labour is concerned. The exact details of the products that can be provided from Italian government sources are the rates at which they can be built up, are necessarily the subject of further detailed negotiations which must take place after the main outline of the plan and the capitalization situation have been agreed.

We feel that Raytheon ELSI represents a significant social/economic asset in Sicily which has resulted from the very heavy Raytheon investment to date. Both Raytheon and the Local Government Authorities must feel certain common obligations and responsibilities for protecting and expanding this. We firmly believe that the plan outlined does offer a formula for the preservation and significant growth opportunities for this asset with the attendant social benefits which must ensue. The alternative is really the actual destruction of the existing asset with the undesirable social effects which must follow.

Raytheon is vigorously prepared to do its part in the preservation and extension of so critical an asset and we hope that the Sicilian Government will take a positive decision to join Raytheon in enabling this consolidation and expansion to take place.

Appendix A

(CAPABILITY OF RAYTHEON ELSI S.P.A.)

[Not reproduced]

Appendix B1

RAYTHEON ELSI S.P.A., HISTORICAL BALANCE SHEETS, CONSOLIDATED WITH SELIT IN 1962

(Millions of Lire)

	ELSI 31-8-56 27 Mo.	*ELSI 31-12-57 16 Mo.*	*ELSI 31-12-58 12 Mo.*	*ELSI 30-6-60 18 Mo.*	*ELSI 30-6-61 12 Mo.*	*ELSI 31-12-61 6 Mo.*	*R.E. Selit 31-12-62 12 Mo.*	*R.E. Selit 31-12-63 12 Mo.*	*R.E. Selit 31-12-64 9 Mo.*	*RayElsi 30-9-65 12 Mo.*	*RayElsi 30-9-66 12 Mo.*
Long Term Assets											
Gross Fixed Assets	489	845	948	1980	2380	2465	4380	5700	6762	7271	7732
Studies + Know How	338	378	307	410	548	651	1475	1516	1486	1588	1389
Other Deferred Costs	43	85	218	328	290	256	833	593	503	591	370
	870	1308	1473	2718	3218	3372	6688	7809	8751	9450	9491
Investments – Gross	–	–	–	–	–	–	123	123	120	119	119
Current Assets											
Inventory	1	520	588	1045	1947	2342	4861	5085	5412	5679	6202
Cash + Receivables	135	98	137	718	802	1161	2384	3375	4295	4724	4048
	136	618	725	1763	2749	3503	7245	8460	9707	10403	10250
Prior Year Losses	–	–	–	–	–	–	26	793***	315***	315	363
Current Year Losses	–	–	250	–	–	–	658	1854	–	48	2137
Total Assets	1006	1926	2448	4481	5967	6875	14740	19039	18893	20339	22360

Paid In Capital	750	750	750	1000	1000	1300	2000	4300	2000	4000	4000
Reserves	1	79	151	212	286	287	473*	825*	1184	1795	2450
Medium + Long-Term Debts	237	700	646	1225	1228	1542	2290	3748	3678	3372	4358
Short Term Planning	–	172	–	233	260	243	5357	8161	7136	8512	8348
Stockholders Financing	–	–	773	1393	2737	2792	3830	–	2000	–	–
Other Liabilities	18	223	128	418	456	711	790	2005	2865	2656	3204
Current Year Profit	–	2	–	–	–	–	–	–	30****	–	–
Total Liabilities and Capital	1006	1926	2448	4481	5967	6875	14740	19039	18893	20335	22360

* Includes 32 M carryover Selit profit at 31-12-60 used at 30-9-64 to effect prior year losses.

** Includes 110 M of deferred cost not reflected as amortized in income statements.

*** Arrived as follows: accumulated losses (prior years) of 2647 M less devaluation of capital stock of 2300 M less 32 M of prior years' profits transferred from reserves.

**** Utilized in 1965 as follows: 13 M to reduce deferred studies, 15 M to reduce other deferred costs, 2 M to reserves.

Appendix B2

RAYTHEON ELSI S.P.A., HISTORICAL INCOME STATEMENTS, CONSOLIDATED WITH SELIT IN 1962

(Millions of Lire)

	ELSI 31-8-56 27 Mo.	*ELSI 31-12-57 16 Mo.*	*ELSI 31-12-58 12 Mo.*	*ELSI 30-6-60 18 Mo.*	*ELSI 30-6-61 12 Mo.*	*ELSI 31-12-61 6 Mo.*	*R.E. Selit 31-12-62 12 Mo.*	*R.E. Selit 31-12-63 12 Mo.*	*R.E. Selit 30-9-64 9 Mo.*	*RayElsi 30-9-65 12 Mo.*	*RayElsi 30-9-66 12 Mo.*
Credits											
Product Sales	–	245	358	1195	980	558	3050	5256	6762	8519	8242
Capitalised Studies	338	40	–	148	202	147	824	225	107	214	150
Fixed Asset Increases	489	356	103	1032	400	85	1057	1320	1062	509	361
Other Capitalisation	43	54	153	140	48	3	300	20	3	172	–
Inventory Increases	1	519	68	457	902	395	1159	224	326	267	523
Total Credits	871	1214	682	2972	2532	1188	6390	7045	8260	9681	9276
Debits											
Purchases	490	617	306	1810	976	339	3580	4060	4003	3911	5109
Oper. Supp. + Serv.	–	59	59	165	262	127	400	444	346	528	466
Payroll/Fringes	–	200	226	512	585	329	1426	1938	2014	2694	2417
Shipping Costs	–	2	6	11	6	3	91	155	175	166	241
Royalties + Mgt.Fees	–	5	11	44	32	23	78	101	89	181	146
Depreciation	–	64	68	51	54	–	–	311	277	499	561
Interest	–	58	90	180	258	173	663	717	676	917	880
Amortization	–	12	91	75	150	61	–	334	230	196	584
Other Costs	381	195	75	124	209	113	810	839	420	637	1009
Total Debits	871	1212	932	2972	2532	1168	7048	8899	8230	9729	11413
Profit (Loss)	–	2	(250)	–	–	–	(658)	(1854)	30	(48)	(2137)

Appendix B3

SELIT S.P.A., FINANCIAL STATEMENTS, PRE-CONSOLIDATION WITH ELSI S.P.A.

(Millions of Lire)

	31-12-60 *24 Mo.*	*31-12-61* *12 Mo.*
Long-Term Assets		
Gross Fixed Assets	586	858
Studies + Know How	–	–
Other Deferred Costs	155	277
	741	1135
Investments — Gross	–	–
Current Assets		
Inventory	813	1360
Cash + Receivables	827	1176
	1640	2536
Prior Year Losses	–	–
Current Year Losses	–	26
Total Assets	2381	3697
Paid in Capital	300	300
Reserves	44	115
Medium + Long-Term Debts	495	475
Short-Term Financing	609	721
Stockholders Financing	804	1751
Other Liabilities	95	335
Current Year Profits	34	
Total Liabilities and Capital	2381	3697
Credits		
Product Sales	1234	1893
Capitalised Studies	–	–
Fixed Asset Increase	586	272
Other Capitalisations	166	155
Inventory Increase	813	547
Total Credits	2799	2867
Debits		
Purchases	2088	2034
Operating Supp. + Serv.	54	79
Payroll/Fringes	94	182
Shipping Costs	23	59
Royalties + Mgt. Fees	–	7

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	31-12-60 *24 Mo.*	*31-12-61* *12 Mo.*
Depreciation	28	41
Interest	87	174
Amortisations	11	33
Other Costs	380	284
Total Debits	2765	2893
Profit (Loss)	34	(26)

Appendix B4

RAYTHEON ELSI S.P.A., PRODUCT LINE SALES — HISTORICAL, CONSOLIDATED WITH SELIT IN 1962

(Millions of Lire)

	ELSI 1957 12 Mo.	*ELSI 1958 12 Mo.*	*ELSI 1959-60 18 Mo.*	*ELSI 1960-61 12 Mo.*	*ELSI 1961 6 Mo.*	*ELSI-Selit 1962 12 Mo.*	*ELSI-Selit 1963 12 Mo.*	*ELSI-Selit 1964 9 Mo.*	*ELSI-Selit 1965 12 Mo.*	*ELSI-Selit 1966 12 Mo.*
Industrial Microwave Tubes	101	95	381	375	166	268	384	316	528	526
Military Microwave Tubes	–	–	–	–	–	–	355	1234	2122	1260
Lamps + Surge Arresters	56	45	94	108	92	145	182	217	235	188
X-ray	65	55	68	188	86	227	207	233	384	520
Cathode Ray Tubes	11	134	445	–	–	1912	3751	4232	4376	4814
Semiconductors	–	–	30	90	81	177	283	481	635	847
Others	12	29	177	219	133	321	94	49	239	87
Total	245	358	1195	980	558	3050	5256	6762	8519	8242

	Selit 1959-60 24 Mo.	*Selit 1961 12 Mo.*
Cathode Ray Tubes	1220	1871
Other	14	22
Total	1234	1893

Personnel (End of Period)	*ELSI 1957 12 Mo.*	*ELSI 1958 12 Mo.*	*ELSI 1959-60 18 Mo.*	*ELSI 1960-61 12 Mo.*	*ELSI 1961 6 Mo.*	*ELSI-Selit 1962 12 Mo.*	*ELSI-Selit 1963 12 Mo.*	*ELSI-Selit 1964 9 Mo.*	*ELSI-Selit 1965 12 Mo.*	*ELSI-Selit 1966 12 Mo.*
ELSI	94	141	421	538	603	1117	1169	1175	1051	1066
Selit	–	–	–	113	292	–	–	–	–	–

Appendix C1

RAYTHEON ELSI S.P.A., BALANCE SHEETS, 5-YEAR PROJECTIONS

(Millions of Lire)

	RayELSI 30-9-67	*RayELSI 30-9-68*	*RayELSI 30-9-69*	*RayELSI 30-9-70*	*RayELSI 30-9-71*
Long-Term Assets					
Gross Fixed Assets	7982	8482	8982	9482	9982
Studies + Know How	1389	1389	1389	1389	1389
Other Deferred Costs	370	370	370	370	370
	9741	10241	10741	11241	11741
Investments – Gross	119	119	119	119	119
Current Assets					
Inventories	5947	5859	5801	5711	5698
Cash + Receivables	3878	3878	4178	4678	4978
	9825	9737	9979	10389	10676
Prior Year Losses	–	1669	2094	2061	1503
Current Year Losses	1669	425	–	–	–
Total Assets	21354	22191	22933	23810	24039
Paid in Capital	10000	10000	10000	10000	10000
Reserves	3150	3876	4627	5427	6275
Medium + Long-Term Debts	4358	4358	4358	4358	4358
Short-Term Financing	2140	2250	2106	1560	895
Other Liabilities	1706	1707	1807	1907	1957
Current Year Profit	–	–	33	558	554
Total Liabilities and Capital	21354	22191	22933	23810	24039

Appendix C2

RAYTHEON ELSI S.P.A., PROFIT AND LOSS STATEMENTS, 5-YEAR PROJECTIONS

(Millions of Lire)

	RayELSI Fiscal 1967	*RayELSI Fiscal 1968*	*RayELSI Fiscal 1969*	*RayELSI Fiscal 1970*	*RayELSI Fiscal 1971*
Credits					
Product Sales	8500	8900	10000	11800	12500
Capitalised Studies	–	–	–	–	–
Fixed Asset Increases	250	500	500	500	500
Other Capitalisation	–		–	–	–
Total Credits	8750	9400	10500	12300	13000

(continued on next page)

(continued from previous page)

	RayELSI Fiscal 1967	*RayELSI Fiscal 1968*	*RayELSI Fiscal 1969*	*RayELSI Fiscal 1970*	*RayELSI Fiscal 1971*
Debits					
Purchases	4449	4522	4680	5157	5419
Oper. Supp. + Serv.	470	480	500	520	540
Payroll/Fringes	2643	2688	3104	3646	4057
Shipping Costs	299	279	267	268	269
Royalties + Mgt.Fees	170	179	204	246	260
Depreciation	584	626	651	700	748
Interest	819	370	370	351	317
Amortisation	–	–	–	–	–
Inventory Decrease	255	88	58	90	13
Other Costs	730	593	633	764	823
Total Debits	10419	9825	10467	11742	12446
Profit (Loss)	(1669)	(425)	33	558	554

Appendix C3

RAYTHEON ELSI S.P.A., SALES BY PRODUCT LINE, 5-YEAR PROJECTIONS

(Millions of Lire)

	RayELSI Fiscal 1967	*RayELSI Fiscal 1968*	*RayELSI Fiscal 1969*	*RayELSI Fiscal 1970*	*RayELSI Fiscal 1971*
Microwave Tubes	1600	1600	1800	200	2000
Surge Arresters	250	250	250	250	250
X-ray	450	450	450	450	450
Cathode Ray Tubes	5500	5300	5000	5000	5000
Semiconductors	400	500	900	1000	1100
New Raytheon Products	226	400	600	1200	1400
New Government Products	–	300	900	1800	2200
Others	74	100	100	100	100
Total Sales	8500	8900	10000	11800	12500
Note: Estimated Total Sales without Government Assistance	8500	7950	6600	4900	2600
Headcount (End of Period)	1039	990	1101	1253	1322

RAYTHEON ELSI S.P.A., STATEMENT OF SOURCE AND APPLICATIONS OF FUNDS, 5-YEAR PROJECTIONS

(Millions of Lire)

	RayELSI Fiscal 1967	*RayELSI Fiscal 1968*	*RayELSI Fiscal 1969*	*RayELSI Fiscal 1970*	*RayELSI Fiscal 1971*	*Total*
Sources of Funds						
New Capital	8500	–	–	–	–	8500
Net Income	–	–	33	558	554	1145
Depreciation	584	626	651	700	748	3309
Current Asset Reduction	424	89	–	–	–	513
Current Liabilities Increase	–	–	100	100	50	250
Bank Debt Increase	–	110	–	–	–	110
Reserve for Severance	116	100	100	100	100	516
Total Sources	9624	925	884	1458	1452	14343
Application of funds						
Net Loss	1669	425	–	–	–	2094
Fixed Asset Additions	250	500	500	500	500	2250
Current Asset Increase	–	–	242	410	287	939
Current Liability Decrease	1498	–	–	–	–	1498
Reduction of Bank Debts	6207	–	142	548	665	7562
Total Applications	9624	925	884	1458	1452	14343

Annex 23

QUARTERLY ECONOMIC REVIEW ANNUAL SUPPLEMENT, THE ECONOMIST INTELLIGENCE UNIT, 1967

[Not reproduced]

Annex 24

IRI, ISTITUTO PER LA RICOSTRUZIONE INDUSTRIALE, 1967 *ANNUAL REPORT*, PAGES 38-39, 65, 1968

[Not reproduced]

Annex 25

THE STATE AS ENTREPRENEUR (S. HOLLAND, ED., 1972), PAGES 45-49, 56-60

[Not reproduced]

Annex 26

AFFIDAVIT OF AVV. GIUSEPPE BISCONTI, STUDIO LEGALE BISCONTI, ROME, DATED 11 DECEMBER 1986

1. My name is Giuseppe Bisconti. I was born in Palmi, Italy, on 22 April 1931. I am an attorney and counselor at law duly admitted to practise in all courts of Italy. I studied law in Italy, Austria, Germany and the United States, and have degrees in law from the University of Rome and Louisiana State University. I am the senior partner in Studio Legale Bisconti, a law firm with offices in Rome, Milan, London and New York, which represents a large number of major multinational and financial institutions. I am making this affidavit entirely from personal knowledge.

2. I have acted as counsel for Raytheon Company with regard to certain of its legal affairs in Europe from time to time since approximately 1962. Until 1967, I primarily advised Raytheon on international tax and corporate matters and the law of the European Economic Community.

3. Prior to 1968, Raytheon also occasionally consulted me with respect to the Italian company Elettronica Sicula S.p.A. ("ELSI"). In 1967, I represented Raytheon in its purchase of La Centrale's shares in ELSI. Beginning in the spring of 1968, I was involved with ELSI on behalf of Raytheon on a more or less daily basis. Raytheon was also advised by another Italian lawyer, Mr. Rinaldo Bianchi, who was attorney for Raytheon Europe International Company ("Raytheon Europe"); Mr. Bianchi and I consulted fully on all major matters affecting ELSI during this time. I was generally aware from my contacts with various Raytheon and Raytheon Europe officials that they were making extensive efforts during 1967 and early 1968 to find an Italian partner for ELSI and to explore the possibilities of Italian government participation in ELSI.

4. Beginning in March 1968, I was consulted by Raytheon officers regarding the possible liquidation of ELSI. I was advised at that time that ELSI's shareholders had made a business judgment that, unless they found an Italian partner or made other satisfactory arrangements for ELSI's future, they were not prepared to infuse any more capital into the company. I advised Raytheon about the Italian legal requirements for an orderly liquidation of an Italian company. Under Italian law, in particular under Article 2447 of the Italian Civil Code, when a company's capital is depleted below a statutory minimum amount (at the relevant time, the statutory minimum was 1 million Italian Lire), the directors are required to call a shareholders' meeting in order that the shareholders bring the capital back at least up to the required statutory minimum. If the shareholders fail to take the required action, the company is dissolved as a matter of law under Article 2448 of the Italian Civil Code. ELSI's capital, after taking into account losses to date at that time, was well in excess of the minimum statutory requirement. It was therefore possible under Italian law for ELSI's shareholders to plan an orderly liquidation of the company. To this end, ELSI's Board of Directors voted on 16 March 1968, to cease production and to dismiss all but a small number of employees whose presence would be necessary during the liquidation period. This decision was affirmed by ELSI's shareholders on 28 March.

5. Raytheon representatives had been preparing for this contingency. Raytheon Vice-President Joseph Oppenheim had been sent to Italy to take over as Chairman of ELSI and co-ordinate the liquidation of ELSI's assets for the highest possible

price. Under his direction, plans had been made for an orderly liquidation over a period of several months, continuing the operation on a limited basis (for example, honoring ELSI's Nato commitments), and amicably satisfying ELSI's debts in an orderly manner. Raytheon's plans appeared to me to be reasonable and conservative. Mr. Oppenheim had world-wide connections with potential buyers, and had been in touch with Japanese and other firms regarding the possible sale of ELSI's product lines, including work-in-process and raw materials. This method of sale would have realized in a short period the highest possible price. ELSI's shareholders were planning to accelerate further the liquidity of ELSI's assets by selling ELSI's substantial inventory and accounts receivable. Steps were taken to properly safeguard the Company's records. Given Mr. Oppenheim's experience and ability, the excellent state of ELSI's plant and assets and its significant accounts receivable, combined with ELSI's and Raytheon's excellent reputations, I believe that had the Italian Government not interfered, the liquidation plan would have been successful.

6. I learned from Raytheon that the Italian Government did not want ELSI to close and that it might act to keep it from closing. National elections were scheduled to take place soon and the incumbent Government was obviously concerned about the likely negative political effects in Sicily resulting from the closing of ELSI's plant. At the end of March 1968, I participated in a meeting in Rome with representatives of the Sicilian Government (held at their request) to discuss and purportedly to finalize a proposed shareholder agreement with Raytheon by which the Sicilian Government (through its industrial agency Ente Siciliano per la Produzione Industriale ("ESPI")) would invest in ELSI and would take an equity interest in ELSI in return. Contrary to their stated intentions, the Sicilian Government representatives did not make any viable proposals and we could reach no agreement.

7. When the Italian Government learned that ELSI's shareholders had determined to close ELSI, it seized ELSI's assets. The Mayor of Palermo, acting as an official of the Central Government, invoked Article 7 of Law of 20 March 1865, No. 2248, Attachment E, and requisitioned ELSI's plant and equipment on 1 April 1968, for a period of six months. As a result of the requisition, ELSI's owners and management were, as a matter of law, deprived of control over and the right to dispose of ELSI's assets.

8. I first heard of the requisition on 1 April 1968, when Mr. Oppenheim and I were meeting with ELSI's Italian bank creditors to review with them our plans for an orderly liquidation which would have assured the payment of their claims. We discontinued the meeting, but agreed to meet soon again, at a time to be selected by the banks. The requisition order was served on ELSI on 2 April. I advised ELSI's Directors that they had to turn over ELSI's assets to the Mayor of Palermo or his representative pursuant to the requisition order.

9. We immediately sent cables to the Mayor and other governmental authorities asking them to revoke the requisition. We received no response. On 9 April 1968, after these efforts had failed, ELSI filed a petition to the Mayor asking him immediately to lift the requisition order. He never responded. In accordance with Italian law, ELSI then filed a formal appeal of the Mayor's actions on 19 April 1968, to the higher authority in the Central Government, that is, the Prefect of Palermo, asking him to declare the Mayor's actions unlawful and immediately quash the requisition so that ELSI's shareholders could proceed with the planned liquidation.

10. The Prefect did not rule on our appeal for 16 months, until 22 August 1969, at which time he ruled that the Mayor had acted unlawfully. This delay was exceptional. To my knowledge, in all other cases where the 1865 law had

been invoked as the basis for the seizure of an industrial plant, the Prefect had quashed the requisition very rapidly, sometimes within one day. (For example, in 1959 the Mayor of Randazzo requisitioned a private water supply for the town and 30 days later the order was annulled by the Prefect of Cantania (*see* Consiglio di Giustizia, Regione Siciliana, Decision of 26 February 1960); in 1961 the Mayor of Alessandria requisitioned the industry "Borsalino" and three days later the order was annulled by the Prefect of Alessandria (Prefettura of Alessandria, Decision of 12 May 1961, *Amministrazione Italiana*, 1961, p. 523); in 1964 the Mayor of Stimigliano requisitioned the industry "Sbordoni Ceramica" and one day later the order was annulled by the Prefect of Rieti (Prefettura of Rieti, Decision of 28 April 1964, *Massimario di Giurisprudenza del Lavoro*, 1964, p. 167); in 1966 the Mayor of Fano requisitioned the industry "SCAC" and one day later the order was annulled by the Prefect of Pesaro (*see Amministrazione Italiana*, 1966, p. 58); and in 1968 the Mayor of Casalmaggiore requisitioned the industry "Eridania" and 30 days later the order was annulled by the Prefect of Cremona (Prefettura of Cremona, Decision of 8 December 1968, *Massimario di Giurisprudenza*, 1969, p. 304).)

11. On the day after we filed the appeal to the Prefect, President Carollo of Sicily delivered a written memorandum to Raytheon threatening that the requisition would be prolonged indefinitely unless Raytheon abandoned its plans to close ELSI. I was informed of this immediately by Mr. Oppenheim. The disposability of ELSI's assets was a fundamental prerequisite to ELSI's shareholders' ability to take ELSI through an orderly liquidation; they were relying on the proceeds of these sales in large part to pay ELSI's creditors in an orderly manner. Without the ability to dispose of its assets, ELSI would not have the liquidity needed to pay its debts as they came due and therefore would soon become technically insolvent under Italian law.

12. All indications from the Italian Government were that the requisition would not be quashed in the near term. Because ELSI's illiquidity and its consequent inability to meet its obligations when due were caused by the requisition, and would continue, I advised ELSI's directors that they had an obligation to file a petition for a declaration of bankruptcy, failing which they could be held personally liable pursuant to Article 217 of the Bankruptcy Law, Royal Decree of 16 March 1942, No. 267. I had not previously contemplated such a step, since I saw no possibility of its being required by ELSI's financial situation prior to the requisition. Given the requisition, however, and the consequent inability to dispose of ELSI's plant and equipment, it was evident that ELSI would no longer be in a position to satisfy regularly its obligations and pay its debts as they came due.

13. ELSI's directors decided on 25 April 1968, that ELSI should file for bankruptcy. Therefore, on 26 April 1968, I submitted a petition in bankruptcy for ELSI with the Civil and Criminal Tribunal in Palermo. That petition explained that the requisition had deprived ELSI of the ability to dispose of its assets at a critical time and had, therefore, made it technically insolvent. The petition was accepted by the Tribunal on 16 May 1968. As a result of the bankruptcy declaration, control of ELSI and its assets was put in the hands of the court and was never returned to ELSI's management and shareholders.

14. When the bankruptcy court adjudged ELSI bankrupt on 16 May 1968, it appointed Mr. Giuseppe Siracusa, a Palermo attorney, to be the Curator in bankruptcy. Creditors were allowed 30 days for an initial filing against the bankrupt. Raytheon and its subsidiary Raytheon Service Company ("RSC") held credits of over US $1 million for goods and services they had advanced to ELSI on unsecured open accounts. Under Italian law, the filing of documents support-

ing a claim in bankruptcy may be subject to a registration tax, the amount of which is a percentage of the claim and varies depending on the nature of the claim. If Raytheon and RSC had filed in bankruptcy, they would have paid a substantial tax. Given ELSI's many secured creditors, the likelihood that the full value of ELSI's assets would not be realized in the bankruptcy proceeding, and the costs of the bankruptcy, I advised Raytheon and RSC not to file claims at the time. Under Italian law, it would have been possible for them to file such claims at a later stage in the proceedings and participate in distributions subsequent to their filing. As the bankruptcy proceeded to a conclusion, however, it became very apparent that Raytheon and RSC would not recover enough in the bankruptcy to justify the costs of filing. On my advice, therefore, these companies did not file in the bankruptcy.

15. Raytheon Europe International Company, however, filed a claim in the bankruptcy, and I was appointed to represent Raytheon Europe on the five-member creditors committee appointed by the bankruptcy judge. This committee also included two representatives of ELSI's former employees, one representative of the bank creditors, and one representative of other creditors.

16. After the bankruptcy declaration, there were continuing discussions between ELSI's shareholders and Italian government officials concerning a possible take-over of ELSI by a subsidiary of Istituto per la Ricostruzione Industriale ("IRI"), an agency of the Italian Government. This take-over would have included a full creditor settlement. As detailed in my separate affidavit dated 20 August 1971, these negotiations proceeded almost to completion. I learned during these negotiations that ELSI's bank creditors were willing to accept a distribution of 30 per cent or 40 per cent of their unsecured claims, except for one bank, which wanted 50 per cent. In November 1968, however, the Government of Italy broke off talks, issuing a press release on 13 November announcing that it intended simply to take over ELSI through one of its agencies.

17. I went to the ELSI plant several times during 1968 and 1969 to attend meetings of the creditors committee that took place there. When I was there, I saw ELSI's employees had occupied the plant. Even though the occupation was in violation of Italian law, local officials took no action to evict the workers from the plant.

18. During 1968 and 1969, I learned that the Curator received inquiries from parties, including major electronics firms, who were interested in purchasing ELSI's assets. However, since the Italian Government had made clear its decision to have one of its agencies acquire ELSI's assets, potential purchasers had no incentive and received no encouragement to pursue their interest. Moreover, during the time ELSI's plant was occupied by its employees, it would have been difficult for the Curator to even show the assets.

19. To my knowledge, the plant sat idle for the remainder of 1968. At the direction of the bankruptcy judge, two auctions of ELSI's plant and assets were held, on 18 January and 22 March 1969. Although IRI had announced its decision to take over the plant and assets, it did not appear at these auctions. No other purchasers appeared either. Indeed, I would have been extremely surprised if there had been other bidders, since it had been repeatedly and officially announced, and was common knowledge in the relevant financial and commercial sectors, that the Government had decided to take over ELSI's assets itself.

20. IRI formed a subsidiary, Industria Elettronica Telecomunicazioni ("ELTEL"), which would take over ELSI's assetts. Although ELTEL did not appear at either of the auctions, it asked in March 1969 to lease ELSI's plant and assets. As a member of the creditors committee, I opposed this lease, since it did not require ELTEL to purchase the assets and effectively precluded all

other potential purchasers from bidding for them. The creditors committee also expressed serious reservations about the lease, asking that ELTEL be forced to commit itself to purchasing ELSI's raw materials and that, if approved, the lease be limited to one year. Nonetheless, on 8 April, the bankruptcy judge approved an 18 month lease with no requirement that ELTEL purchase the raw materials. On behalf of Raytheon Europe, I unsuccessfully appealed the judge's decision to approve the lease.

21. Having leased the plant, ELTEL resumed ELSI's operations, and many of ELSI's former employees returned to work. The other employees were receiving unemployment compensation. The Government of Sicily had also announced its intention to pass a special law providing for additional compensation to the unemployed workers, so that, between the unemployment compensation and the additional compensation, they would receive 100 per cent of their former salaries. These arrangements were designed to satisfy the major financial interests of ELSI's employees with respect to the bankruptcy. As a result, ELSI's employees had no incentive to question the terms under which ELTEL proposed to acquire ELSI's assets.

22. ELTEL then proposed to purchase the bulk of ELSI's "work in process" — material in various stages of completion left on the production lines of the plant from the time of the requisition. The appraised value of this work in process, exclusive of material relating to the Hawk missile production, was 217,300,000 lire. ELTEL offered to purchase this material for 105 million lire. At the creditors' committee meeting held on 2 May to consider this proposal, my proxy made a number of objections, as reflected in the curator's official minutes of that meeting. The committee nontheless approved the sale for the reasons given in the minutes, including the fact that no other offer had been received for this material. To my knowledge, however, no other offers had been solicited; the only general public invitations to purchase any of ELSI's assets were the bankruptcy auction notices, which provided for the sale of ELSI's plant and other physical assets as a single package. On 3 May, the Curator proposed this sale to the bankruptcy judge, who first ordered an investigation of whether the sale might violate any patent rights or otherwise injure legally protected technical information, and then approved the sale.

23. Also on 3 May, a third auction of ELSI's plant and assets was held, with a starting price of 5 billion lire, including 3.2 billion lire for the plant and equipment, and 1.8 billion lire for the remaining inventory at the plant. ELTEL did not bid at this auction, nor did any other bidders appear. Some weeks before, ELTEL had notified the bankruptcy court that it was interested in buying only the plant and equipment, and not the inventory, for a total of 3.2 billion lire. It also submitted its own appraisal of ELSI's plant and assets, arguing that the value of the whole was only 2.381 billion lire.

24. On 27 May ELTEL submitted an offer to purchase ELSI's remaining physical assets for 4 billion lire. The Creditors committee approved this sale on 6 June by a vote of two to one. I voted against it, the bank creditor representative abstained and one of the employees' representatives was absent. The bankruptcy judge approved ELTEL's offer on 7 June 1969, but excluded finished products, motor vehicles, semiconductor material, and items located outside the Palermo plant and warehouse from the sale. I filed an appeal of this decision on 9 June, arguing that it was not in the best interest of ELSI's creditors. The appeal was rejected on 20 June, removing the last obstacle to IRI's acquisition of ELSI's assets. On 12 July 1969, therefore, a fourth auction was held at the price set by ELTEL, and ELSI's assets were sold to ELTEL in accordance with the judge's order. Thus, through the series of four auctions at which the price of ELSI's

assets was successfully reduced, through its lease of the plant, and through its earlier purchase of selected assets, the Italian Government succeeded in minimizing its cost in acquiring ELSI's assets, and thereby minimizing the distribution of proceeds to ELSI's creditors.

25. On 16 August 1969, after the sale to ELTEL had been completed, the Prefect finally ruled that the Mayor had acted unlawfully in requisitioning ELSI's assets. The Mayor of Palermo appealed this order to the President of Italy, the official empowered to hear appeals from Prefect's orders under Italian law. The President dismissed the Mayor's appeal, holding that the Mayor lacked standing to appeal the Prefect's decision.

26. Raytheon had promptly paid all guaranteed bank debts of ELSI. Nevertheless, five of ELSI's unsecured bank creditors, including three IRI-owned banks, filed suits against Raytheon to recover from it the unsecured bank debts, although Raytheon had not guaranteed these debts. The banks argued, among other things, that Raytheon was in fact ELSI's sole shareholder. Their position was factually inaccurate and therefore would have no foundation in Italian law. These cases were initially litigated in Palermo before the Tribunal (the court of first instance) and the Court of Appeals. Three were finally adjudged by the Italian Supreme Court; two were discontinued by the plaintiffs. All of the judicial decisions (at all levels of the Italian judiciary) were in favor of Raytheon Company and, in addition, totally cleared Raytheon of any explicit or implicit misconduct in its actions with respect to ELSI.

28. After the Prefect's ruling, the Curator sued the Mayor and the Minister of the Interior of Italy to obtain compensation for the bankrupt estate as a result of the Mayor's unlawful actions. This suit was not brought, nor could it have been brought under Italian law, on behalf of ELSI's shareholders.

29. The bankruptcy proceedings continued for over 17 years. On 10 November 1985, the bankruptcy judge in Palermo approved the final bankruptcy distribution report. Attached to this affidavit are translations into English of relevant sections of the five distribution reports[1] in the bankruptcy. The reports indicate that after payment of the secured and preferred creditors, unsecured creditors were paid only 0.3998 per cent on their claims.

I certify that the foregoing is true and correct.

(Signed) Giuseppe BISCONTI.

Subscribed and sworn to before me this 11th day of December, 1968.

(Signed) Martha J. MISTRETTA,
Notary Public.

Attachment

PALERMO COURT — BANKRUPTCY DIVISION, CURATORSHIP OF THE BANKRUPTCY OF RAYTHEON ELSI S.P.A, DRAFT PARTIAL DISTRIBUTION

[Not reproduced]

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[1] Not reproduced.

Annex 27

Affidavit of Joseph Oppenheim, Former Chairman of the Board, Raytheon-ELSI, S.p.A., Dated 22 September 1971

AFFIDAVIT

My name is Joseph Oppenheim. I was born in Boston, Massachusetts, on 23 November 1914. In 1968 and for several years prior thereto I was employed by Raytheon Company as Director of International Affairs. On 9 April 1968, I was elected Chairman of the Board of Raytheon-ELSI S.p.A. (hereinafter referred to as "ELSI") and spent most of my time from then until October 1968 in Italy meeting with Italian government officials, and co-operating with the Curator in the bankruptcy with respect to ELSI's affairs.

During June, July, August and October of 1968, I had many meetings with officials of the Italian Government and with officers of various banks in Rome. Among those with whom I discussed ELSI's problems were Minister Pieraccini, Undersecretary Senator Caron, and their aide Professor Cafagna.

My conversations with Italian government officials were directed largely to the question of solving all the problems connected with the ELSI affairs which arose as a consequence of the seizure of the ELSI plant by the Mayor of Palermo which forced ELSI into voluntary bankruptcy. At a meeting on 31 July 1968, with Undersecretary Senator Caron, attended also by Avv. Giuseppe Bisconti, Professor Cafagna and Dr. Nuvolone, Chief of Cabinet of Minister Colombo, we were advised of a plan which envisaged the purchase at fair value of the ELSI assets by a government-owned company and a total settlement with creditors. When the distribution required to satisfy unsecured creditors was discussed at later meetings with Undersecretary Senator Caron and Professor Cafagna in October 1968, the amount mentioned by the Italian government representatives as being an acceptable distribution to the Italian creditor banks was generally 40 per cent of their unsecured debt, with only one bank allegedly insisting on 50 per cent.

On 14 October 1968, I participated together with Mr. Charles H. Resnick, Vice-President and General Counsel of Raytheon Company, and Avv. Giuseppe Bisconti, in a meeting with Undersecretary Senator Caron and his aide, Professor Cafagna. The issue of whether a 50 per cent payment to banks could be generated from the ELSI assets was announced to us as a crucial one. Simultaneously, in adjoining rooms at the Italian Ministry of the Budget, in Rome, Undersecretary Senator Caron was meeting with representatives of the Italian creditor banks. Undersecretary Senator Caron and Professor Cafagna excused themselves repeatedly during our meeting in order to confer with said representatives of the Italian creditor banks. In the course of said meeting, Undersecretary Senator Caron and Professor Cafagna reported that there was disagreement among representatives of the various banks as to whether a 40 per cent distribution or a 50 per cent distribution on unsecured debts would be acceptable to the banks. The majority of the banks were willing to accept 40 per cent, they indicated; except one, we were told, which was insisting upon 50 per cent.

Along with Mr. Resnick and Avv. Bisconti, I worked with Undersecretary Senator Caron and Professor Cafagna to show that even after providing for the expenses of the bankruptcy, based on the plan that had previously been mentioned to us and publicly announced contemplating the purchase by a government-owned company of ELSI's fixed assets at a price (which we were informed was to be Lire 4 billion) and the sale of the inventory at a justifiable value, all the assets of ELSI could be disposed of at a total price which would yield at least a 41.85 per cent distribution to all unsecured creditors. Throughout the negotiations it was made clear by us that Raytheon would also provide technical information to a buyer of the ELSI plant in exchange for a full release by creditor banks. Similarly, it was indicated to us that each of the banks was willing to grant such releases if it received a 40 per cent distribution on its unsecured debts; only one bank (IRI-owned) was holding out for 50 per cent.

In November 1968, I was suddenly advised by Avv. Giuseppe Bisconti that the Italian Government had decided that all negotiations would be discontinued and had announced that IRI-STET would take over ELSI's assets.

(Signed) Joseph OPPENHEIM.

The Commonwealth of Massachusetts,
Middlesex. 22 September 1971.

Subscribed and sworn to before me.

(Signed) Mary E. MACDOUGALL,
Notary Public.

Annex 28

AFFIDAVIT OF CHARLES H. RESNICK, GENERAL COUNSEL, RAYTHEON COMPANY, DATED 8 SEPTEMBER 1971

AFFIDAVIT

My name is Charles H. Resnick. I was born in Beverly, Massachusetts, USA, on 4 November 1924. I am an attorney and counselor at law duly admitted to practise in the Commonwealth of Massachusetts and before Federal Courts in the United States at all levels including the United States Supreme Court.

For more than five years I have been the principal legal counsel for Raytheon Company, holding the title of General Counsel.

During the months of June, July, August and September of 1968, I was in frequent touch with Avv. Giuseppe Bisconti of Rome, Italy, who had been engaged to represent Raytheon Company in Italy. Avv. Bisconti, among other things, had reviewed with me and obtained my approval for forms of release to be obtained on Raytheon's behalf in connection with a proposal that the assets of Raytheon's former affiliate, ELSI, be taken over by a government-owned company; and that Raytheon grant a technical license to such company or to the actual operator of the plant.

In October of 1968 at the request of Avv. Bisconti and at the request of Joseph Oppenheim, then Chairman of the Board of Directors of ELSI, I traveled to Italy for the purpose of attending a series of meetings intended to resolve various problems created by the seizure of ELSI's plant by the Mayor of Palermo and the subsequent bankruptcy of ELSI.

On 14 October 1968, together with Mr. Joseph Oppenheim and Avv. Bisconti, I participated in a meeting at the Ministry of Budget with Senator Caron, then Undersecretary for the Budget and Economic Planning, and with Professor Cafagan, aide to Senator Pieraccini and later to Senator Caron. The meetings continued on 15 October 1968, with Professor Cafagna. At the 14 October 1968, meeting, meetings were simultaneously being held with representatives of Italian creditor banks in adjoining rooms, and Senator Caron frequently left our meeting to confer with said representatives. At the meetings with Senator Caron and Professor Cafagna, Mr. Oppenheim, Avv. Bisconti and myself were told that the majority of the Italian creditor banks were agreeable to accepting in full settlement of their claims against ELSI, a 40 per cent distribution and that only one bank was holding out for 50 per cent. At our meetings, Messrs. Oppenheim, Bisconti and I analyzed data made available to us by Senator Caron and Professor Cafagna to show that the requested payments could be made through monies realized from the sale of ELSI's assets.

At a later date I learned from Avv. Bisconti that the proposal for a complete settlement of the ELSI matter had been abandoned and that Raytheon Company would probably be sued by Italian creditor banks.

(Signed) Charles H. RESNICK.

The Commonwealth of Massachusetts,
Middlesex.

8 September 1971.

Subscribed and sworn to before me.
(Signed) Mary E. MACDOUGALL,
Notary Public.

Annex 29

AFFIDAVIT OF AVV. GIUSEPPE BISCONTI, STUDIO LEGALE BISCONTI, ROME, DATED 20 AUGUST 1971

[Italian text of Exhibits not reproduced]

AFFIDAVIT

My name is Giuseppe Bisconti. I was born in Palmi, Italy, on 22 April 1931. I am an attorney and counselor at law duly admitted to practise in all courts of Italy.

For a number of years, I have acted as counsel for Raytheon Company with regard to some of its legal affairs in Italy. Beginning in the spring of 1968, I was consulted and engaged on behalf of Raytheon Company with regard to the problems created by the seizure of Raytheon-ELSI S.p.A.'s plant by the Mayor of Palermo and the events subsequent thereto.

During the period between the beginning of April 1968 and the end of the year 1968, I had numerous conferences with representatives of Italian banks which were creditors of Raytheon-ELSI S.p.A. (hereinafter referred to as "ELSI") and with high officials of the Italian Government. Among the banking officials with whom I discussed claims were representatives of Banca Nazionale del Lavoro, Banca Comerciale Italiana, Credito Italiano, Banco di Roma, Banco di Sicilia, Cassa di Risparmio Vittorio Emanuele and IRFIS. Among the government officials with whom I discussed the matter were H.E. Senator Pieraccini, then Minister for the Budget and Economic Planning; H.E. Senator Caron, then Undersecretary for the Budget and Economic Planning; Professor Cafagna, aide to H.E. Senator Pieraccini and later to H.E. Senator Caron. The subject-matter of the discussions with the Italian government officials was the take-over of ELSI by a company owned by the Italian Government and a settlement with the ELSI creditors, as a result of which Raytheon Company would be held harmless and released from any claims threatened by ELSI's creditors. This plan contemplated Raytheon Company granting to the company that would take over or operate the ELSI plant a technical license of the same scope as ELSI had. Raytheon Company had stated to the Italian Government, from the first meeting with H.E. Senator Pieraccini on 18 June 1968, its complete readiness to grant such a license, provided as a result of any settlement of the ELSI matter Raytheon Company would be held harmless and released from any creditors' threatened claims.

This plan under which (1) ELSI's assets would be taken over by a government-owned company; (2) Raytheon would grant a technical license to such company or to the actual operator of the plant; and (3) Raytheon would be released from any claims the Italian banks or any other creditors of ELSI might make, was discussed by me and Mr. Joseph Oppenheim, a Vice-President of Raytheon Company, in subsequent meetings with Professor Cafagna during July 1968. On 31 July 1968, Mr. Oppenheim and I met with H.E. Senator Caron, who confirmed the above plan.

On 25 July 1968, H.E. the Hon. Giulio Andreotti, then Minister for Industry and Commerce, announced to the Italian Chamber of Deputies "not a proposal but a fact", namely, the formation by some government agencies and the Region of Sicily of a new company which would take over ELSI, and he indicated the possibility of an over-all out of court settlement with creditors. Information available from other sources indicated that the new company would be owned by IRI, IMI and ESPI. A further plan of the Italian Government was to have the new IRI-IMI-ESPI company lease the ELSI plant to an electronic company, which would operate it. Accordingly, negotiations were conducted by the Italian Government, represented by H.E. Senator Caron and his aide, Professor Cafagna, with the representatives of General Instruments, a US corporation.

From 13 September 1968, to 15 November 1968, I had numerous telephone conversations and meetings with H.E. Senator Caron and/or Professor Cafagna. At some of these meetings, Mr. Joseph Oppenheim and Mr. Charles H. Resnick, Vice-President and General Counsel of Raytheon Company were also present. In the course of these meetings, it was indicated to me by the Italian government representatives that the Italian creditor banks were amenable to a complete settlement of the ELSI matter and of their claims along the lines of the above-described plan.

Complete releases would be given by the banks to Raytheon Company. I drafted the text of such releases and delivered them together with a covering statement to H.E. Senator Caron on 24 September 1968. A copy of the draft releases and the covering statement are attached hereto as Exhibits 1, 2 and 3 and English translations are attached hereto as Exhibits 1A, 2A and 3A. I was also told at said meetings that the only issue pending was the percentage of distribution on their unsecured claims which the banks would accept. I was told that some banks would be satisfied even with 30 per cent, the majority of the banks were asking for 40 per cent and only one bank was holding out for 50 per cent. This was confirmed to me in verbal communications I had in September and October 1968 with banking officials. An attorney for the bank that had taken the stiffest position as a creditor told me, on a personal basis, that his bank would be happy with a 50 per cent recovery payment.

More specifically, on 14 October 1968, together with Mr. Joseph Oppenheim and Mr. Charles H. Resnick, I participated at a meeting at the Ministry of Budget with H.E. Senator Caron and Professor Cafagna. At the same time, the representatives of the Italian creditor banks were meeting in adjoining rooms and H.E. Senator Caron was frequently leaving our meeting to confer with said representatives. At such meeting, we were told by H.E. Senator Caron and Professor Cafagna that the majority of the Italian creditor banks were agreeable to accept a 40 per cent distribution of their unsecured claims and that only one bank was holding out for 50 per cent.

On 15 November 1968, I had a meeting with Professor Cafagna, at which he gave me a copy of the official press release of the Italian Government issued on 13 November 1968, announcing that IRI-STET would take over ELSI. A copy of said press release is attached hereto as Exhibit 4 and an English translation is attached hereto as Exhibit 4A. Professor Cafagna told me that the Italian Government's decision to discontinue the discussions towards a complete settlement of the ELSI matter along the above-described lines was a political one and that Raytheon Company should from then on take care of the Italian creditor banks and their threatened claims, all alone.

(Signed) Giuseppe Bisconti.

Republic of Italy,
Province of Rome,
City of Rome,
Embassy of the United States of America.

Subscribed and sworn to before me Phillip V. Battaglia, Vice Consul of the United States of America at Rome, Italy, duly commissioned and qualified, this 20th day of August 1971.

(Signed) Phillip V. BATTAGLIA,
Vice Consul of the United States of America.

Exhibit 1A

For good and valuable consideration receipt whereof is hereby acknowledged, the undersigned Institute hereby declares to waive irrevocably the submission or enforcement of any claims, actions or proceedings whether directly or indirectly against Raytheon Company, a US company with offices in Lexington, Massachusetts, USA, and/or any of its subsidiaries or affiliates (except only for Raytheon-ELSI S.p.A., an Italian company with offices in Palermo, Italy, hereinafter called ELSI and/or any officer or director of Raytheon Company or of any of its subsidiaries or affiliates (including any officer or director of ELSI) and therefore declares irrevocably to release, remise and discharge the above-mentioned companies, officers and directors of and from any claims, liabilities, actions or proceedings, direct or indirect, in any way arising in relation to the financings granted by the undersigned Institute to ELSI or in relation to any damage, loss or expense that the undersigned Institute might have suffered or may suffer as a result of the bankruptcy of ELSI or in relation to the activities and operations or to the conduct of the business and management of ELSI or for any other reason or on any other ground whatsoever in any way related to or deriving from the relationship of the undersigned Institute with ELSI and/or with Raytheon Company and/or related to or deriving from any obligations whatsoever in any way or for any reason undertaken by Raytheon Company to this Institute in relation to ELSI. The undersigned Institute acknowledges the payment by Raytheon Company to it of the amounts due under the guaranty or guaranties given on behalf of ELSI and that the undersigned Institute has no claim whatsoever against Raytheon Company in relation to said guaranty or guaranties.

The undersigned Institute further agrees that it will not cause or otherwise occasion any action to be initiated or prosecuted, and that it will not in any way abet or aid others to initiate or prosecute any action, directly or indirectly, such as may be aimed at or may result in a determination of liability of Raytheon Company and/or of any of its subsidiaries or affiliates (except only for ELSI) and/or of any officer or director of Raytheon Company or of any of its subsidiaries or affiliates (including any officer or director of ELSI), in any way arising from or related to the bankruptcy of ELSI or in any way arising from or related to the activities and operations or the conduct of the business and management of ELSI.

Therefore, the undersigned Institute declares that from now on it has no claim whatsoever against Raytheon Company and/or any of its subsidiaries and affiliates (except only for ELSI) and/or against any officer or director of Raytheon

Company and/or of any of its subsidiaries or affiliates (including any officer or director of ELSI) in any way, for any reason or on any ground arising from or related to the above.

Exhibit 2A

For good and valuable consideration receipt whereof is hereby acknowledged, the undersigned Institute hereby declares to waive irrevocably the submission or enforcement of any claims, actions or proceedings whether directly or indirectly against Raytheon Company, a US company with offices in Lexington, Massachusetts, USA, and/or any of its subsidiaries or affiliates (except only for Raytheon-ELSI S.p.A., an Italian company with offices in Palermo, Italy, hereinafter called ELSI) and/or any officer or director of Raytheon Company or of any of its subsidiaries or affiliates (including any officer or director of ELSI) and therefore declares irrevocably to release, remise and discharge the above-mentioned companies, officers and directors of and from any claims, liabilities, actions or proceedings, direct or indirect, in any way arising in relation to the financings granted by the undersigned Institute to ELSI or in relation to any damage, loss or expense that the undersigned Institute might have suffered or may suffer as a result of the bankruptcy of ELSI or in relation to the activities and operations or to the conduct of the business and management of ELSI or for any other reason or on any other ground whatsoever in any way related to or deriving from the relationship of the undersigned Institute with ELSI and/or with Raytheon Company and/or related to or deriving from any obligations whatsoever in any way or for any reason undertaken by Raytheon Company to this Institute in relation to ELSI.

The undersigned Institute further agrees that it will not cause or otherwise occasion any action to be initiated or prosecuted, and that it will not in any way abet or aid others to initiate or prosecute any action, directly or indirectly, such as may be aimed at or may result in a determination of liability of Raytheon Company and/or of any of its subsidiaries or affiliates (except only for ELSI) and/or of any officer or director of Raytheon Company or of any of its subsidiaries or affiliates (including any officer or director of ELSI), in any way arising from or related to the bankruptcy of ELSI or in any way arising from or related to the activities and operations or the conduct of the business and management of ELSI.

Therefore, the undersigned Institute declares that from now on it has no claim whatsoever against Raytheon Company and/or any of its subsidiaries and affiliates (except only for ELSI) and/or against any officer or director of Raytheon Company and/or of any of its subsidiaries or affiliates (including any officer or director of ELSI) in any way, for any reason or on any ground arising from or related to the above.

Exhibit 3A

Upon request of the Italian Government and in the framework of an over-all and satisfactory solution of ELSI's problems, Raytheon Company is prepared to waive its subrogation rights deriving from the payment of the guarantees granted by it to credit institutions on behalf of ELSI and consequently not to submit the relative claims as ELSI's creditor, on the condition that the abovementioned institutions sign releases in favor of Raytheon Company in conformity with the texts drawn up by Raytheon Company's legal counsel.

Exhibit 4A

PRESS RELEASE — 13 NOVEMBER 1968

[See also p. 318, infra*]*

Minister Restivo, Minister Bo, Under-Secretary Caron, the President of the Region of Sicily the Hon Carollo, the Governor of the Bank of Italy Dr. Carli, the Secretary-General for [Economic] Planning Dr. Ruffolo, the Director-General of the Treasury Dr. Nuvoloni and the General Manager of IRI Dr. Medugno, held a meeting presided over by Minister Colombo, in order to examine the situation following the bankruptcy of Raytheon-ELSI and the possibility of starting again the activities of the latter's plant also for the purpose of maintaining employment.

> "Without prejudice to the undertaking of the STET Group to build in Palermo a new plant to manufacture in the field of telecommunications, the IRI-STET Group, solicited by the Government, since it has proven impossible to carry out other carefully examined solutions, has communicated its willingness to intervene in taking over the [ELSI] plant and in commencing also new productions."

The IRI-STET Group, in taking such a positive attitude, has borne in mind the burdens deriving to it from the new recent conventions concerning the main telecommunication services, in a field in which technological progress is very fast and imposes to face by suitable means the problems of technological research applied to telecommunications and, specifically, to the switching centrals.

The application of the provisions of law, recently approved by Parliament, for promoting applied research in the fundamental areas of the industrial activities and the function of prominent intervention which STET, by benefiting from the above-mentioned provisions, can perform for the technical progress of the telephone exchange, can give considerable impulse to the achievement of the abovementioned objective. In this perspective, the STET Group has adhered to the request of intervention to take over the plant of the bankrupt Raytheon-ELSI of Palermo.

Conditions and modalities for the intervention must necessarily be agreed upon by and between the STET Group and the Authorities of the Sicilian Region.

Annex 30

Affidavit of Dominic A. Nett, Former Controller, Raytheon-ELSI, S.p.A. Dated 17 April 1987

I, Dominic A. Nett, personally appeared before a notary public in the Commonwealth of Massachusetts and, upon being duly sworn, stated that:

1. I was born in Woburn, Massachusetts ("Mass.") on 18 July 1922, and received my early education in the Woburn Public Schools. In 1945, I graduated from The Bentley School of Accounting and Finance in Boston, Mass., with a diploma in accountancy. I initially worked for Raytheon Company ("Raytheon") from 1943 until 1946. I then joined the US Army, where I performed a period of military service and then worked in a civilian capacity for the US Department of the Army. I then returned to work for Raytheon in 1950, and have continued to work for Raytheon until the present time. During this period, I also acquired a Bachelor of Science Degree and a Masters Degree in Business Administration from Suffolk University in Boston, Mass.

2. In August of 1963, from the position of Division Staff Accountant, I was assigned by Raytheon for a six-to-nine-month period as a systems analyst to provide accounting systems and procedures assistance to L'Elettronica Sicula S.p.A. ("ELSI"). I therefore closed my home and together with my family moved on a temporary basis to Palermo, Sicily. However, my assignment was repeatedly extended, and I remained in Palermo to perform this function on behalf of Raytheon until the summer of 1965. After a brief vacation in the United States, I returned to ELSI and continued work in the same capacity until 1 September 1966, at which time I was assigned as Controller and remained in that capacity until ELSI's bankruptcy.

In March, due to the series of sporadic strikes which were occurring at the ELSI plant in Palermo at the time, it was ELSI's management desire to keep its sales and accounting operations functioning as uninterruptedly as possible. Thus, on 2 March 1968, I assisted in the move of the ELSI books of account and accounting documents to ELSI's sales office in Milan. Here together with both ELSI and Raytheon personnel we carried out ELSI sales and accounting functions. We attempted to update the books of account which were in arrears of postings due to delays caused principally by a series of earthquakes and labor interruptions earlier at Palermo. We were able to bring the books up-to-date to 30 December 1968. In addition to posting to the ledgers we performed shipping, billing, collection, and payment functions. These we did until 24 April 1968, after which time certain key books of account were sent to Rome where they were made part of the petition in bankruptcy filed by ELSI on 26 April 1968. Then I released the ELSI employees there, locked the office, and waited in Milan for further developments. Subsequently the petition in bankruptcy was accepted by the Tribunal of Palermo, and on or about 25 May 1968, I turned over the keys of the Milan office and warehouses to the appointed bankruptcy Trustee, and then the doors were locked and sealed by the Court officer who accompanied him. I then moved to Rome and was assigned to work at the headquarters of Raytheon Europe International Company from where I continued to provide assistance on ELSI matters to both Raytheon and ELSI's bankruptcy Trustee until October 1968. Then I was assigned to work on financial matters involving

SELENIA, an Italian company jointly owned by Raytheon, IRI, and FIAT. Finally, in September 1969, I returned permanently to the United States as a Senior Financial Analyst at Raytheon's corporate headquarters. Subsequently, I was promoted to Senior Management Analyst, the position which I still hold. In this position I have provided a wide variety of advanced and routine financial information and services to the Corporate Executive Offices including the handling of special assignments to help resolve accounting problems at various Raytheon operations. I also assist in the compilation of sensitive executive reports and analyses, such as monthly and annual forecasts of overall earnings, cost trends, and data relative to union negotiations.

3. When I first arrived at ELSI in 1963, I participated in meetings of various task forces and together developed and installed new basic financial management systems, including a compatible Italian/US chart of accounts, inventory-taking procedures, and cost accounting and reporting systems. I also designed and introduced new and improved forms. Thereafter, I continued to monitor, oversee, and improve these systems and procedures as well as adapted and installed Raytheon's standard reporting format for regular financial management reporting. I also made special reports and analyses to Raytheon headquarters as may have been requested by its departments from time to time. I provided training to a certain number of ELSI's financial personnel and on occasion made recommendations on personnel organization. I also assisted ELSI's outside accountants, Coopers and Lybrand, on audits. Since I spoke Italian, I worked with the Italian-speaking staff in Italian.

4. In 1967, as part of its effort to improve ELSI's financial position, Raytheon assigned a number of additional staff to work in Palermo. With this additional manpower we were able to perform more comprehensive and detailed studies of various aspects of ELSI's operations and, as a result, to recommend and implement more wide-ranging improvements. For example, together with ELSI's technical manufacturing, and marketing personnel, as applicable, we conducted a study of the inventory to determine ELSI's current and near-future needs and began a program to dispose of or convert to useful items any surplus or obsolete parts and finished goods. Standard costs were carefully examined more closely to assure accuracy in pricing the inventory. We also conducted a study of accounts receivable to assure that the balances shown on the books net of reserves were good and collectible.

5. In April 1968 I worked with a number of ELSI's key accounting personnel to prepare a provisional balance sheet for ELSI as of 31 March 1968. This balance sheet is *Attachment A* to this affidavit. Since the plant by that time had been requisitioned, not all of the records were available to us in preparing this balance sheet. However, we had previously moved most of ELSI's financial records to ELSI's office in Milan, including the invoices for accounts receivable and payable. Moreover, I was familiar with many of ELSI's financial activities in detail. Together, therefore, we were able to prepare a balance sheet which in my opinion objectively reflected ELSI's assets and liabilities at 31 March 1968.

6. During 1986, I received and analyzed the five distribution plans prepared by the Trustee in bankruptcy for ELSI, along with the Court approvals of modifications to these plans. Since I read as well as speak Italian, I was able to review copies of the original documents. Based on these materials, I have prepared the attached Schedules A through E (*Attachment B*). *Schedule A* summarizes the amounts and sources of proceeds realized in the bankruptcy of ELSI and the distribution of these proceeds. As this schedule indicates, according to the distribution plans, the bankruptcy realized a total of Lire 6,373,838,866 in proceeds. Of this amount, Lire 47,916,666 and Lire 3,205,000,000, respectively, were re-

ceived from the rental and sale of fixed assets to Elettronica Telecomunicazioni, S.p.A. ("ELTEL"), a subsidiary of the IRI group of Italian-owned companies. (Fixed assets here includes property, plant, and equipment located in Palermo.) The balance of proceeds of Lire 3,120,922,200 realized was received from the sale of movable assets and the collection of accounts receivable. Included in this last amount is Lire 801 million for the sale to ELTEL of that portion of inventory which it chose only to acquire. As this schedule further indicates, according to the distribution plans and Court orders, of the total Lire 6,373,838,866 realized, Lire 673,566,932 went to pay the Trustee and other expenses of the bankruptcy, Lire 291,696,987 went to pay Italian government agencies for taxes, registration of deeds, and customs duties. Lire 2,638,347,390 went to IRFIS, Istituto Regionale per il Finanziamento alle Industrie, in Sicily for payment of principal and interest on a number of "Mezzogiorno" loans which were secured by a first mortgage on ELSI's plant, property, and equipment. Lire 1,097,778,643 went to pay various banks for loans and credit extended to ELSI. Of this amount, the major portion, Lire 1,025,834,395, went to the Banco di Sicilia for principal and interest on loans and credit which were secured by a second mortage on ELSI's property, plant, and equipment and by a lien on its inventories. Payments of Lire 1,014,449,388 were made to ELSI's employees for wages, salaries, and severance pay. In relation to ELSI employees, payments of Lire 441,582,112 were made to various private and State insurance organizations for employee withholdings and company contributions for life insurances, pension, medical, accident and other employee benefits. Other payments were to Sales Agents for Lire 21,180,198, to attorneys for Lire 5,428,320, to other priority creditors for Lire 13,463,493, and finally to unsecured creditors for Lire 1,539,187 to third parties and Lire 82,216 to Raytheon group companies. Remaining in reserve, and as discussed further below in paragraph 8, was Lire 174,724,000.

In total, of the total proceeds received, Lire 6,340,404,315 went to pay secured and priority claims and Lire 33,434,551 went to pay unsecured claims.

7. Schedules B through E are detailed analyses in elaboration and support of Schedule A, as follows:

Schedule B is a general summary of each distribution plan, showing key dates, liabilities admitted, the total proceeds received, and the payments made. The proceeds are shown by fixed and movable assets categories; the liabilities and payments are shown by several priority payment classifications. For purposes of this report, the classifications are not displayed in the order of payment priority.

Schedule C is a summary of the total proceeds received, according to each distribution plan, shown by date and description. More specific breakdowns of how much was received, respectively, from the sale of other inventory, other fixed assets, and collections of receivables were not detailed in the Trustee's distribution plans.

Schedule D is a summary analysis of the details given in Schedules E-1 through E-5. It shows by payment classifications the total liabilities admitted and payments made to the various claimants.

Schedules E1-E5 are analyses of the five distribution plans presented by the Trustee to the Court. I have indicated on each schedule the modifications in the planned payments, if any, which were ordered by the Court directed in connection with approval of the plans.

8. These schedules are subject to the following notes. First, while it is possible to trace each item from one plan to the next for the first four plans, certain information and detail have been omitted in the last plan, dated 10 October 1985, so that it is impossible to relate it exactly to the fourth plan, dated 31 December

1979. Specifically, the final plan does not recapitulate the liabilities which have been accepted and admitted, but which remain unpaid. As a consequence, it is impossible to determine whether any additional liabilities were accepted and admitted between January 1980 and October 1985, which would be in addition to those shown in the fourth distribution plan. I was therefore unable to finalize the items for claims admitted and final unpaid claims. Second, there were minor errors in arithmetic in the distribution plans, which I resolved in my best judgment. Third, as indicated in Schedules D and E-4, the fourth plan includes a legal reserve amount of Lire 92,724,000, which is not included or accounted for in the final plan. At my request, in October 1986, Mr. Mario Romita of Studio Legale Bisconti, Italian lawyer for Raytheon, contacted the Trustee in bankruptcy by telephone regarding the disposition of this amount. Mr. Romita has advised me that the Trustee stated that all proceeds were distributed and remembered that this amount was paid to preferred creditors. This would have been the logical distribution, under the circumstances, and I have therefore included this amount in the totals for payments to preferred creditors. Fourth, I was unable to determine from the distribution plans how much, if any, was paid to employees, employee insurance organizations, and sales agents for work or services performed during the occupation of ELSI's plant by the Mayor of Palermo commencing 2 April 1968, until the date of the bankruptcy, and during the period of bankruptcy itself. Subject to these notes, I swear and affirm that these schedules fairly and accurately reflect the underlying bankruptcy distribution plans and court-ordered modifications.

9. I have also prepared a detailed breakdown of ELSI's employee count at various points during the period 30 September 1964 to 29 March 1968. All but the 29 March 1968 figures are based on information published in management reports provided by ELSI to Raytheon as of those dates. The 29 March 1968 figures are based on a summary and listing of ELSI's employees on or about that date. This breakdown is *Attachment C*.

10. Finally, I have reviewed the financial schedules prepared by Mr. Arthur V. Schene, summarizing ELSI's financial history, recapitulating various appraisals of amounts to be realized for ELSI's assets, and detailing ELSI's liabilities as of 31 March 1968, comparing the realization and distribution of proceeds from the disposal of ELSI's assets at book value and estimated minimum liquidation value with the results of the bankruptcy, and analyzing Raytheon's losses. In my opinion, these schedules are fairly and accurately representative of the facts as they existed.

(Signed) Dominic A. NETT.

Commonwealth of Massachusetts,
County of Middlesex.

On this 17th day of April, 1987, before me personally appeared Dominic A. Nett to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

(Signed) Rosemarie MALONEY,
Notary Public.

Attachment A

RAYTHEON ELSI S.P.A., PROVISIONAL BALANCE SHEET AS OF 31/3/68

(Italian Lire)

Facilities		
Land and buildings	1.082.636.651	
Plant, machinery, and equipment	5.793.172.263	
Furniture, fixtures, and motor vehicles	210.471.488	7.086.280.402
Construction in process		184.070.315
Studies in process		303.031.500
Deferred costs		
Patents, studies and experience	853.039.281	
Start-up costs — Military orders	68.115.690	
Other costs to be ammortized	496.946.249	1.418.101.220
Stores and work in process		6.534.627.305
Cash and banks		
Cash	3.398.818	
Banks and current postal accounts	17.881.299	21.280.117
Notes Receivable		128.136.196
Investments		119.209.490
Accounts Receivable		
Customers	2.150.763.315	
Affiliated companies	106.030.092	
Other	236.211.519	2.493.004.926
Accrued receivables and prepaid expenses		352.369.770
Loss		
Prior year	2.683.460.080	
Current year	1.068.119.463	3.751.579.543
		22.391.690.784
Capital stock		4.000.000.000
Ordinary Reserve		1.514.377
Other Reserves		
Depreciation	1.505.994.640	
Employee severance pay	584.946.979	
Bad debts	80.574.054	
Taxed reserve	862.331.226	3.033.846.899
Notes payable		1.200.000.000
Mortgage loans		
IRFIS loans	2.341.594.117	
Banco di Sicilia loan	1.500.000.000	3.841.594.117

Accounts and accrued payables		
Banks	7.929.000.000	
Suppliers	283.000.000	
Parent group companies	1.098.320.481	
Accrued and other	1.004.414.910	10.314.735.391
		22.391.690.784

FACILITIES

Land and buildings		
Land	166.969.006	
Buildings	915.667.645	1.082.636.651
Plant, machinery and equipment		
Plant and machinery	4.659.384.132	
Electrolitic cells	58.242.434	
Ovens and related parts	339.212.171	
Equipment	236.793.837	
Small tools and equipment	10.626.073	
Internal vehicles	25.316.327	
(Tax reserve)	463.597.289	5.793.172.263
Furniture, fixtures, and automobiles		
Furniture and office machines	155.513.473	
Stores and office fixtures	39.130.098	
Automobiles	15.827.917	210.471.488
		7.086.280.402

OTHER COSTS TO BE AMORTIZED

Start-up costs	23.000.000
New marketing organization	31.106.869
Production improvements	165.790.269
Company reorganization	150.096.463
Cost to be transferred to magnetron production orders	126.952.648
	496.946.249

STORES AND WORK IN PROCESS

Raw materials	340.900.000
Semi-finished parts	1.052.500.000
Purchased parts	498.000.000
Plant repair materials	131.000.000
Materials to be recovered	35.571.000
Finished goods	2.182.800.000
Work in process	844.000.000
Materials in transit	434.856.305
(Tax Reserve)	1.015.000.000
	6.534.627.305

CASH

Cash — Palermo headquarters	500.000
Cash — Milan office	3.109.160
Cash — Rome office	182.811
	3.398.818

BANK AND POSTAL CURRENT ACCOUNTS

Current postal account — Palermo	6.475.575
Credito Italiano — Transit account	5.769.928
Banca Popolare di Palermo	1.000.000
Milan banks and current postal account	3.109.160
Banco di Roma and current postal account	1.526.638
	17.881.299

INVESTMENTS

Raytheon ELSI AG — Zurich	71.209.490
Raytheon ELSI AB — Stockholm	48.000.000
	119.209.490

AFFILIATED COMPANIES

Raytheon ELSI AG — Zurich	64.827.449
Raytheon ELSI AB — Stockholm	41.202.643
	106.030.092

ACCRUED AND OTHER PAYABLES

Payables accrued/Transistor AG	20.001.942
Interest payable accrued	243.000.000
Employee insurance contributions accrued:	
INAM	63.000.000
INPS	156.000.000
INPDAI	4.000.000
Imposts payable	64.519.463
Payroll payable	4.000.000
Taxes payable	9.430.307
Owens Illinois (for Patent Rights)	28.479.799
ANIE	1.426.500
Associazione Lampade	1.450.000
Emoluments due Sindaci	2.296.756
IRFIS for interest on loans (matured 21.12.67)	41.899.546
Banco di Sicilia for interest on loans (matured 21.12.67)	30.000.000
Accrual for deferred fringe benefits (Contractuals)	75.000.000
Sales commissions accrued	42.000.000
Quantity discounts to customers	149.910.597
Promotional expenses accrued	12.000.000
Sales incentives accrued	34.000.000
ENASARCO	2.000.000
Other	20.000.000
	1.004.414.910

NOTES RELATIVE TO THE ESTIMATION OF THE BALANCE SHEET AS OF 31/3/1968

Land and Buildings: are considered unchanged the values per the 30/9/67 balance sheet

Plant, machinery, equipment, furniture, fixtures, motor vehicles: the increments for these items are still in in-process, therefore remain unchanged the values per the balance sheet as of 30/9/67.

Construction in Process:

increase from October to December 1967	mil.	27.4
estimated increase January-March 1968	mil.	39.7
		67.1
decrease for oven sale to TRAG		(21.2)
		45.9

Studies in Process: are considered unchanged the values per the balance sheet as of 30/9/67.

Deferred costs:

— Patents, studies and experience: are considered unchanged the 30/9/67 values.

— Start-up costs — Military orders: decrease October 1967-January 1968 4,900,000 with respect to the 30/9/67 values.

— Other costs to be ammortized: are considered unchanged the values at 30/9/67.

Cash and banks:

Cash Palermo	L	500.000	estimated because we lack data
Cash Milano	L	3.109.160	book balance as of 31/3/68
Cash Roma	L	182.811	book balance as of 31/3/68
	L	3.398.818	
Current postal a/c Palermo		6.475.573	book balance as of 31/3/68
Credito Italiano Transit account		5.769.928	book balance as of 31/3/68
Banca Popolare Pal.		1.000.000	estimated value
Current Postal a/c and Milano banks		3.109.160	book balance as of 31/3/68
Current Postal a/c and Banco Roma-Roma		1.526.638	book balance as of 31/3/68
		17.881.299	

Notes receivable:

at 30/12/67 book balance	118.136.196
estimated increase January-March 1968	10.000.000
	128.136.196

Investments: unchanged the values per the balance sheet as of 30/9/1967.

Receivables:

Customers	L	1.973.863.315	accounting position by Volpe
		436.300.000	Hawk accrual as of 31/12/67
		54.300.00	Hawk accrual January (Nett)
		2.464.463.315	
		(313.700.000)	advances received on Hawk
		2.150.763.315	
Affiliated Companies	L	106.030.092	value unchanged 30/9/67
Other receivables	L	236.211.519	as a result of the estimates indicated on the relative page attached to the Balance Sheet.

Accrued Receivables and Prepaid Expenses:	L 352.369.770	as a result of the estimates indicated on the relative page attached to the Balance Sheet.

Other Reserves:

Depreciation	L 1.270.292.640	at 30/9/67
increment October 1967-March 1968	235.702.000	
	L 1.505.994.640	
Employee severance pay	L 538.939.772	at 30/9/67
increment October 1967-March 1968	46.007.206	
	L 584.946.979	

Bad Debts: the value at 30/9/67 is considered unchanged L 80.574.054

Taxed reserve: L 862.331.226 unchanged the value of the balance sheet 30/9/67

Notes payable:

in favor of the Banca Commerciale	L 250.000.000
in favor of the Banca Nazionale Lavoro	800.000.000
in favor of the Banco di Roma	150.000.000
	L 1.200.000.000

Mortgage Loans:

IRFIS	2.341.594.117	unchanged in respect to Balance Sheet 30/9/67
Banco di Sicilia	1.500.000.000	diminished by L 75.741.142 in respect to 30/9/67

Banks: values estimated at 31/3/68

Regular accounts		
Banca Commerciale	6,0	
Banca Nazionale del Lavoro	350,0	
Banco di Roma	38,0	
Banco di Sicilia	280,0	
Credito Italiano	285,0	
Cassa C. di Risparmio VE	300,0	1259,0
Import accounts		
Banca Commerciale	580,0	
Banca Nazionale del Lavoro	550,0	
Banco di Roma	291,0	
Banco di Sicilia	270,0	
Credito Italiano	216,0	
Cassa di Risparmio VE	210,0	2117,0
Export accounts		
Banca Commerciale	35,0	
Banca Nazionale del Lavoro	199,0	
Banco di Sicilia	106,0	
Credito Italiano	12,0	
Cassa di Risparmio VE	45,0	397,0
Special accounts		
Comit — advances on invoices account	17,0	
BNL — advances on invoices account	384,0	
Banco di Roma — Hawk advance	179,0	
Comit — short term financing	2100,0	
BNL — short term financing	1000,0	

Banco di Roma — short term financing	228,0	
Banco di Roma — advances on notes	71,0	
Banco di Roma — advances on drafts	15,0	
First National City Bank	162,0	4156,0
		7929,0

Suppliers: situation based on documents prepared in Milano by Rag. Amerio.

Payables to Parent Group Companies: increment October 1967-March 1968 estimated

for royalties	L mil.	10,9
management fee	L mil.	37,4
for materials	L mil.	46,0
		94,3

Other and Accrued Payables: values estimated as per sheet attached to the Balance Sheet.

Attachment B

SCHEDULE A. SUMMARY OF SOURCES AND DISTRIBUTION OF PROCEEDS REALIZED IN THE BANKRUPTCY OF RAYTHEON-ELSI S.P.A.

(Italian Lire)

Sources:	
From rental of fixed assets to ELTEL	47,916,666
From sale of fixed assets to ELTEL	3,205,000,000
From sale of movable assets and collection of receivables	3,120,922,200
Total proceeds	6,373,838,866

Paid to	*Priority and Secured Claims*	*Unsecured Claims*	*Total*
Bankruptcy administration	673,566,932	–	673,566,932
Tax offices	255,185,406	194,540	255,379,946
Registry of deeds	15,550,600	–	15,550,600
Customs	20,766,441	–	20,766,441
Total — Government	291,502,447	194,540	291,696,987
IRFIS	2,638,347,390	–	2,638,347,390
Banco di Sicilia	1,022,894,946	2,939,449	1,025,834,395
Banca Nazionale del Lavoro	11,682,380	12,890,294	24,572,674
Credito Italiano	14,868,887	2,099,447	16,968,334
Banca Commerciale Italiana	17,357,216	7,698,358	25,055,574
Banco di Roma	–	2,767,432	2,767,432
Cassa Centrale di Risparmio V.E.	–	2,580,234	2,580,234
Total — Banks	1,066,803,429	30,975,214	1,097,778,643

(continued on next page)

Paid to	*Priority and Secured Claims*	*Unsecured Claims*	*Total*
Employees	1,014,399,901	49,487	1,014,449,388
Employee insurance organizations	440,988,205	593,907	441,582,112
Sales agents	21,180,198	–	21,180,198
Attorneys	5,428,320	–	5,428,320
Other privileged creditors	13,463,493		13,463,493
Other unsecured creditors	–	1,539,187	1,539,187
Raytheon Group Companies	–	82,216	82,216
Legal reserves	174,724,000	–	174,724,000
Total Payments	6,340,404,315	33,434,551	6,373,838,866

SCHEDULE B. SUMMARY OF CURATOR'S PLANS FOR THE DISTRIBUTION OF PROCEEDS REALIZED IN THE BANKRUPTCY OF RAYTHEON-ELSI S.P.A., INCLUDING FINAL MODIFICATIONS BY THE COURT

(Italian Lire)

Description	*1st Report*	*2nd Report*	*3rd Report*	*4th Report*	*Final Report*	*Combined Reports*
Dates:						
Covering liabilities verified and admitted at	11/11/69	16/12/71	31/1/75	31/12/79	10/10/85	
Signed by the curator	18/11/69	16/12/71	19/2/75	6/2/80	8/11/85	
Reviewed by the creditors' committee	22/11/69	16/12/71				
Accepted by the court	26/11/69	18/1/72	5/1/75	19/2/80	11/11/85	
Filed in the chancery			5/1/76			
Approved by the court	11/12/69	11/1/72	24/4/75	18/3/80	22/11/85	
Approval registered by the court	21/12/69	7/2/72	21/5/75	27/3/80	10/12/85	
Summary of Liabilities, Proceeds, and Payments: Liabilities verified and admitted:						
Preferred claims	5,150,168,686	83,109,026	119,841,552	166,456,707	*	5,719,575,971*
Unsecured claims	10,221,329,847	(2,469,437,851)	(473,287,379)	6,089,132	*	7,284,693,749*
Procedural and administrative expenses	238,111,142	131,326,049	154,392,667	64,105,124	85,631,950	673,566,932
Total liabilities	15,809,609,675	(2,255,002,776)	(199,053,160)	236,650,963	85,631,950*	13,677,836,652*
Proceeds:						
From rental of fixed assets to ELTEL	47,916,666	—	—	—	—	47,916,666
From sale of fixed assets to ELTEL	3,205,000,000	—	—	—	—	3,205,000,000
From sale of movable assets and collection of receivables	1,908,222,578	512,298,823	393,202,820	250,084,548	57,113,431	3,120,922,200
Total proceeds	5,161,139,244	512,298,823	393,202,820	250,084,548	57,113,431	6,373,838,866

Distribution of Proceeds:						
Payment of preferred claims	(3,988,028,102)	(615,972,774)	(96,046,735)	(506,626,527)	(285,439,245)	(5,492,113,383)
Payment of unsecured claims				–	(33,434,551)	(33,434,551)
Payment of procedural and administrative expenses	(238,111,142)	(131,326,049)	(154,392,667)	(64,105,124)	(85,631,950)	(673,566,932)
Total Payments	(4,226,139,244)	(747,298,823)	(250,439,402)	(570,731,651)	(404,505,746)	(6,199,114,866)
To legal reserves for preferred claims	(935,000,000)	(700,000,000)	(842,763,418)	(522,116,315)	(174,724,000)**	(174,724,000)**
From legal reserves for preferred claims	–	935,000,000	700,000,000	842,763,418	522,116,315	–
Net activity to reserves for preferred claims	(935,000,000)	235,000,000	(142,763,418)	320,647,103	347,392,315	(174,724,000)
Total Distribution of Proceeds	(5,161,139,264)	(512,298,823)	(393,202,820)	(250,084,548)	(57,113,431)	(6,373,838,866)
Balance Unpaid:						
Preferred claims	1,362,140,584	829,276,836	853,071,653	512,901,833	*	*
Unsecured claims	10,221,329,847	7,751,891,996	7,278,604,617	7,284,693,749	*	*
Procedural and administrative expenses	–	–	–	–	–	–
Total Unpaid	11,583,470,431	8,581,168,832	8,131,676,270	7,797,595,582	*	*

* Unable to include further amounts to complete these items accurately due to insufficient details in the final report received.

** L92,724,000 portion of this reserve balance, confirmed in the 4th report, was not addressed in the final report.

SCHEDULE C. SUMMARY OF PROCEEDS REALIZED IN THE BANKRUPTCY OF RAYTHEON-ELSI S.P.A. PER 1st-4th AND FINAL DISTRIBUTION PLANS

(Italian Lire)

			Proceeds realized from sale of:		
Plan No.	*Plan Date*	*Description*	*Fixed Assets*	*Movable Assets*	*Total*
1st	13/11/69	Rental of Fixed Assets to ELTEL	47,916,666	–	47,916,666
		Sale of fixed assets to ELTEL	3,205,000,000	–	3,205,000,000
		Sale of inventory to ELTEL	–	801,000,000	801,000,000
		Sale of materials and collection of receivables		1,107,222,578	1,107,222,578
		Total	3,252,916,666	1,908,222,578	5,161,139,244
2nd	16/12/71	Sale of materials and collection of receivables	–	512,298,823	512,298,823
3rd	31/2/75	Sale of materials and collection of receivables	–	393,202,820	393,202,820
4th	31/12/79	Realized from 1/1/75 to 31/12/79	–	250,084,548	250,084,548
Final	10/10/85	Realized from 1/1/80 to 10/10/85	–	57,113,431	57,113,431
57,113,431					
		Total Proceeds Realized	3,252,916,666	3,120,922,200	6,373,838,866

Note: Specific breakdowns as to how much was received separately from the sale of inventory, other fixed assets, the collection of receivables, etc., were not detailed in the distribution plans.

Included in the sale of movable assets is also the sale of capital assets not acquired by ELTEL.

SCHEDULE D (PAGE 1). SUMMARY ANALYSIS OF CLAIMS AND DISTRIBUTION OF PROCEEDS REALIZED IN THE BANKRUPTCY OF RAYTHEON-ELSI S.P.A. — 1st THROUGH 4th AND FINAL DISTRIBUTION PLANS, 13 NOVEMBER 1969-10 OCTOBER 1985

(Italian Lire)

	Claims Verified and Admitted				*Claims Payments*			
					Preferred		*Unsecured*	
Description	*1st-4th Reports*	*1st-4th Reclass*	*Final Report*	*Total Claims*	*1st-4th Reports*	*Final Report*	*Final Report*	*Total Payments*
Preferred Claims:								
Tax Offices (Esattore)	255,229,213	—	—	255,229,213	—	(255,185,406)	(194,540)	(255,379,946)
Registry of Deeds (Ufficio Registro)	69,960,600	—	—	69,960,600	(15,550,600)	—	—	(15,550,600)
Customs (Ammin. Finanze, Sez Doganale)	—	20,766,441	—	20,766,441	(20,766,441)	—	—	(20,766,441)
I.G.E. (Turnover tax)	8,105,361	—	—	8,105,361	—	—	—	—
Total — Government	333,295,174	20,766,441	—	354,061,615	(36,317,041)	(255,185,406)	(194,540)	(291,696,987)
IRFIS	2,638,347,390	—	—	2,638,347,390	(2,638,347,390)	—	—	(2,638,347,390)
Banco di Sicilia	1,001,306,264	21,588,682	—	1,022,894,946	(1,022,894,946)	—	(2,939,449)	(1,025,834,395)
Banca Nazionale del Lavoro	—	8,431,120	3,251,260	11,682,380	(8,431,120)	(3,251,260)	(12,890,294)	(24,572,674)
Credito Italiano	—	5,382,776	9,486,111	14,868,887	(5,382,776)	(9,486,111)	(2,099,447)	(16,968,334)
Banca Commerciale Italiana	—	13,304,241	4,052,975	17,357,216	(13,304,241)	(4,052,975)	(7,698,358)	(25,055,574)
Banco di Roma	—	—	—	—	—	—	(2,767,432)	(2,767,432)
Cassa di Risparmio V.E.	—	—	—	—	—	—	(2,580,234)	(2,580,234)
Total — Banks	1,001,306,264	48,706,819	16,790,346	1,066,803,429	(1,050,013,083)	(16,790,346)	(30,975,214)	(1,097,778,643)
Employees	1,014,399,901	—	—	1,014,399,901	(1,014,399,901)	—	(49,487)	(1,014,449,388)
Compagnia Tirrena di Cap. e Assic.	2,504,000	—	—	2,504,000	(2,504,000)	—	—	(2,504,000)
INPS	369,296,569	—	—	369,296,569	(263,925,788)	—	(370,893)	(264,296,681)
INPDAI	54,783,230	—	—	54,783,230	(41,145,454)	—	(56,871)	(41,202,325)
INAH	162,446,753	—	—	162,446,753	(121,022,257)	—	(165,615)	(121,187,872)
INAIL	5,534,945	—	—	5,534,945	(5,402,690)	—	(528)	(5,403,218)
PASDAI	6,680,762	—	—	6,680,762	(6,680,762)	—	—	(6,680,762)
CASDAI	307,254	—	—	307,254	(307,254)	—	—	(307,254)
Total — Employee Insurance	601,553,513	—	—	601,553,513	(440,988,205)	—	(593,907)	(441,582,112)

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	Claims Verified and Admitted				*Claims Payments*			
					Preferred		*Unsecured*	
Description	*1st-4th Reports*	*1st-4th Reclass*	*Final Report*	*Total Claims*	*1st-4th Reports*	*Final Report*	*Final Report*	*Total Payments*
Attorneys	–	5,428,320	–	5,428,320	(5,428,320)	–	–	(5,428,320)
Sales Agents	–	21,180,198	–	21,180,198	(21,180,198)	–	–	(21,180,198)
Other Preferred Claims	130,673,729	(96,081,778)	(16,790,346)	17,801,605	–	(13,463,493)	–	(13,463,493)
Total — Other Claims	130,673,729	(69,473,260)	(16,790,346)	44,410,123	(26,608,518)	(13,463,493)	–	(40,072,011)
Total	5,719,575,971	–	– •	5,719,575,971 •	(5,206,674,138)	(285,439,245)	(31,813,148)	(5,523,926,531)
Unsecured Claims								
Various companies, per list					–	–	(1,539,187)	(1,539,187)
Raytheon Group companies:								
Raytheon Company					–	–	(902)	(902)
Raytheon Service Company					–	–	(366)	(366)
Transistor AG					–	–	(973)	(973)
Raytheon Europe					–	–	(79,975)	(79,975)
Total	7,284,693,749		•	7,284,693,749•	–	–	(1,621,403)	(1,621,403)

SCHEDULE D (PAGE 2). SUMMARY ANALYSIS OF CLAIMS AND DISTRIBUTION OF PROCEEDS REALIZED IN THE BANKRUPTCY OF RAYTHEON-ELSI S.P.A. — 1st THROUGH 4th AND FINAL DISTRIBUTION PLANS, 13 NOVEMBER 1969-10 OCTOBER 1985

(Italian Lire)

	Claims Verified and Admitted				*Claims Payments*			
					Preferred		*Unsecured*	
Description	*1st-4th Reports*	*1st-4th Reclass*	*Final Report*	*Total Claims*	*1st-4th Reports*	*Final Report*	*Final Report*	*Total Payments*
Bankruptcy Administration Expenses:								
Pro rata procedural and administrative expenses	587,934,982			587,934,982	(587,934,982)		–	(587,934,982)
Expenses from date of deposit to date of approval	–	–	631,950	631,950	–	(631,950)	–	(631,950)

Approximate expenses from date of approval to date of discharge	-	-	13,000,000	13,000,000	-	(13,000,000)	-	(13,000,000)
Balance of curator's fees per court order 16 October 1985	-	-	60,000,000	60,000,000	-	(60,000,000)	-	(60,000,000)
Value added tax on curator's fees	-	-	12,000,000	12,000,000	-	(12,000,000)	-	(12,000,000)
Total — Bankruptcy Administration Expenses	587,934,982	-	85,631,950	673,566,932	(587,934,982)	(85,631,950)	-	(673,566,932)
Total Claims and Payments	13,592,204,702	-	85,631,950*	13,677,836,657*	(5,794,609,120)	(371,071,195)	(33,434,551)	(6,199,114,866)
Legal reserves as required per Section 113 of Royal Decree No. 267, 16/3/42					(92,724,000)	(82,000,000)	-	(174,724,000)**
Total Payments and Unapplied Reserves as of Final Report					(5,867,333,120)	(453,071,195)	(33,434,551)	(6,373,838,866)

* Unable to include further amounts to complete these items accurately due to insufficient details in the final distribution plan received.

** Lire 92,724,000 portion of this reserve balance, confirmed in the 4th distribution plan, was not addressed in the final plan.

SCHEDULE E1. ANALYSIS OF CURATOR'S PLAN FOR DISTRIBUTION OF PROCEEDS REALIZED IN THE BANKRUPTCY OF RAYTHEON-ELSI S.P.A.
1st DISTRIBUTION PLAN, 13 NOVEMBER 1969

(Italian Lire)

		From Proceeds Realized from Disposition of:			
To Pay to	*For*	*Fixed Assets*	*Movable Assets*	*Total*	*Exceptions by the Court*
—	Procedural and administrative expenses at 31/10/69	165,982,116	72,129,026	238,111,142	* Court ordered that these amounts be paid to Banco di Sicilia.
Esattoria Comunale	Municipal tax on land plus interest on arrears	90,780	-	*90,780	
Ufficio Registro	Public registry of deeds for registration tax	22,010,000	-	*22,010,000	

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To Pay to	*For*	*From Proceeds Realized from Disposition of*			*Exceptions by the Court*
		Fixed Assets	*Movable Assets*	*Total*	
IRFIS	**IRFIS** first mortgage loans already paid by **ELTEL** which assumed the loans under deed dated 6 August 1969	2,180,000,000	—	2,180,000,000	
IRFIS	**IRFIS** first mortgage loans — balance of principal and interest to 12 July 1969	458,347,390		458,347,390	
Banco di Sicilia	Banco di Sicilia second mortgage loan — payment on account	126,486,380	—	126,486,380	
1060 listed employees	Due employees less withholdings for insurance and attached wages	—	984,878,095	984,878,095	
Compagnia Tirrena di Capitalizzazione e Assicurazione	Employee Insurance		183,000	183,000	
Compagnia Tirrena di Capitalizzazione e Assicurazione	Employee Insurance	—	2,321,000	2,321,000	
Randazzo Angelo S.p.A	Attached wages of Viola Stefano	—	226,440	226,440	
Curatore Fallimento Raytheon ELSI	Attached wages of Viola Stefano	—	15,000	15,000	
Nicola Colombo in Oldeni	Employee payment per order of Milan court	—	244,863	244,863	
INPS	Social security contributions	—	135,175,921	135,175,921	
INPDAI	Social security contributions	—	24,793,265	24,793,265	
Banco di Sicilia, sezione credito industriale	Preferential claim on inventories and finished goods	—	53,255,968	53,255,968	
Total		2,952,916,666	1,273,222,578	4,226,139,244	

SCHEDULE E2. ANALYSIS OF CURATOR'S PLAN FOR DISTRIBUTION OF PROCEEDS REALIZED IN THE BANKRUPTCY OF RAYTHEON-ELSI S.P.A. — 2nd DISTRIBUTION PLAN, 16 DECEMBER 1971

(Italian Lire)

To Pay To	*For*	*From Proceeds Realized from Disposition of:*			*Exceptions by the Court*
		Fixed Assets	*Movable Assets*	*Total*	
—	Procedural and administrative expenses 1/11/69–30/9/71	35,146,917	96,179,132	131,326,049	None
Banco di Sicilia	Second mortgage loan — payment on account	164,853,083	—	164,853,083	
Avvocato Salvatore Cosentino	Payment to attorney	—	52,630	52,630	
2 listed employees	Late claims	—	4,050,000	4,050,000	
15 listed employees	Assessed liabilities	—	18,920,000	18,920,000	
INPS	Social security contributions	—	13,567,742	13,567,242	
INPDAI	Social security contributions	—	1,656,382	1,656,382	
Banco di Sicilia, sezione credito industriale	Preferential claim on inventories and finished goods	—	412,873,437	412,873,437	
Total		200,000,000	547,298,823	747,298,823	

SCHEDULE E3. ANALYSIS OF CURATOR'S PLAN FOR DISTRIBUTION OF PROCEEDS REALIZED IN THE BANKRUPTCY OF RAYTHEON-ELSI S.P.A. — 3rd DISTRIBUTION PLAN, 11 JANUARY 1975

(Italian Lire)

To Pay to	For	From Proceeds Realized from Disposition of: Fixed Assets	Movable Assets	Total	Exceptions by the Court
	Procedural and administrative expenses 1/10/71-31/1/75	–	154,392,667	154,392,667	* Banco di Sicilia claimed its rights had priority over the proposed payments to Banco Nazionale del Lavoro, Credito Italiano, and Banco Commerciale Italiano. The Court agreed and ordered that these amounts be paid to Banco di Sicilia, thus making a total of 89,981,232 to be paid to it, and none to the other banks.
Employee (...)	Employee claim (court costs)	–	200,000	200,000	
2 listed employees	Late claims	–	3,710,211	3,710,211	
2 listed employees	Assessed liabilities	–	2,155,292	2,155,292	
Banca Nazionale del Lavoro	Preferential claims on exports	–	5,568,963	*5,568,963	
Credito Italiano	Preferential claims on imports	–	5,382,776	*5,382,776	
Banca Commerciale Italiana	Preferential claims on imports	–	3,532,196	*3,532,196	
Banco di Sicilia, sezione credito industriale	Preferential claim on inventories and finished goods	–	75,497,297	75,497,297	
Total		–	250,439,402	250,439,402	

SCHEDULE E4. ANALYSIS OF CURATOR'S PLAN FOR DISTRIBUTION OF PROCEEDS REALIZED IN THE BANKRUPTCY OF RAYTHEON-ELSI S.P.A — 4th DISTRIBUTION PLAN, 31 DECEMBER 1979

(Italian Lire)

To Pay to	For	*From Proceeds Realized from Disposition of*			Exceptions by the Court
		Fixed Assets	*Movable Assets*	*Total*	
Ufficio Registro	Procedural and administrative expenses 1/1/75-31/12/79	–	64,105,124	64,105,124	* Banco di Sicilia claimed it was due a total of L143,381,015, but the curator countered that L67,825 for legal expenses was not due because it was not a liability of the bankruptcy and interest of L11,557,806 was not due because it was calculated to 4 March 1980 instead of the date of last sale of movable assets which took place on 6 March 1978. This left L131,755,384 which the curator expressed a favorable opinion. Finally, the court ordered that the L92,747,610 shown in the distribution plan be increased by L39,007,774 to L131,755,884 and that the movable assets reserve be decreased from L468,400,089 to L429,392,315.
	In settlement of preferential claims over reality	7,276,000	–	7,276,000	
3 listed attorneys	Attorney fees	–	5,375,690	5,375,690	
9 listed sales agents	Sales commissions	–	21,180,198	21,180,198	
Banco di Sicilia, sezione credito industriale	Settlement of interest outstanding on preferential claims	–	92,747,610	*92,747,610	
Banco di Sicilia	Settlement re subrogation of customs claims	–	21,588,682	21,588,682	
Banca Nazionale del Lavora	Settlement re subrogation of customs claims	–	8,431,120	8,431,120	
Credito Italiano	Settlement re subrogation of customs claims	–	5,382,776	5,382,776	
Banca Commerciale Italiana	Settlement re subrogation of customs claims	–	13,304,241	13,304,241	
Amministrazione finanze circoscrizione doganale	13 listed customs payments	–	20,766,441	20,766,441	
Ufficio Registro	Registry of deeds	–	8,274,600	8,274,600	
Insurance institutions:	*For social security and other employee insurance:*				Note: In the 4th distribution plan: of the L100,000,000 reserve that was initially available from proceeds received from the sale of fixed assets, L7,276,000 was paid to the Officio Registro. This left L92,724,000 remaining in this reserve.
INPDAI (3 listed payments)	Insurance contributions and fines	–	14,695,807	14,695,807	
INAM (3 listed payments)	Insurance contributions and fines	–	121,022,257	121,022,257	
INAIL (2 listed payments)	Insurance contributions and fines	–	5,402,690	5,402,690	

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To Pay to	*For*	*From Proceeds Realized from Disposition of:*			*Exceptions by the Court*
		Fixed Assets	*Movable Assets*	*Total*	
FASDAI (1 listed payment)	Insurance contributions	–	6,680,762	6,680,762	At the end of the 4th plan the reserves stood as follows:
CASDAI (1 listed payment)	Insurance contributions	–	307,254	307,254	From sale of fixed assets L 92,724,000
INPS (6 listed payments)	Insurance contributions and fines	–	115,182,625	115,182,625	From sale of movable assets 429,392,315
Total per curator's plan		7,276,000	524,447,877	531,723,877	Total L512,116,315
Banco di Sicilia	Additional payment of interest per court approval	–	39,007,774	*39,007,774	
Total as approved by the court		7,276,000	563,455,651	570,731,651	

SCHEDULE E5. ANALYSIS OF CURATOR'S PLAN FOR DISTRIBUTION OF PROCEEDS REALIZED IN THE BANKRUPTCY OF RAYTHEON-ELSI S.P.A. — FINAL DISTRIBUTION PLAN, 10 OCTOBER 1985

(Italian Lire)

To Pay to	*For*	*From Proceeds Realized from Disposition of:*			*Exceptions by the Court*
		Fixed Assets	*Movable Assets*	*Total*	
—	Expenses from date of deposit of report to date of approval	–	631,950	*631,950	*Report shows L531,950.
Avv. Giuseppe Siracusa	Balance of curator's fees by court ruling 16 October 1985	–	60,000,000	60,000,000	The court approved the distribution plan as presented and ordered payment of all items listed with the exception of items shown on Attachments A and B with amounts less than 1,000 lire.

					Items with Amounts less than 1,000 lire	
					No. of items	*Amount*
IVA/CAP	Value added tax on curator's fees	–	12,000,000	12,000,000		
–	Approximate expenses from date of approval of report to date of discharge	–	13,000,000	13,000,000		
Per attachment A to Plan:	*Final distribution of proceeds — Preferred Claims:*					
Esattoria Comunale Palermo	Final distribution of proceeds — Preferred Claims:	–	251,701,070		–	–
Esattoria Comunale Roma	Final distribution of proceeds — Preferred Claims:	–	3,484,336		–	–
Banca Nazionale del Lavoro	Final distribution of proceeds — Preferred Claims:	–	3,251,260		–	–
Credito Italiano	Final distribution of proceeds — Preferred Claims:	–	9,486,111		–	–
Banca Commerciale Italiana	Final distribution of proceeds — Preferred Claims:	–	4,052,975		–	–
82 listed companies and individuals	Final distribution of proceeds — Preferred Claims:	–	13,463,493		7	3,671
Total — Attachment A	Final distribution of proceeds — Preferred Claims:	–	285,439,245	283,439,245	7	3,671
Per Attachment B to Plan:	*Final distribution of proceeds — Unsecured Claims*					
12 listed employees	Final distribution of proceeds — Unsecured Claims:	–	49,487		5	1,791
Banca Nazionale del Lavoro	Final distribution of proceeds — Unsecured Claims:	–	12,890,294		–	–
Cassa di Risparmio V.E.	Final distribution of proceeds — Unsecured Claims:	–	2,580,234		–	–
Credito Italiano	Final distribution of proceeds — Unsecured Claims:	–	2,099,447		–	–
Banca Commerciale Italiana	Final distribution of proceeds — Unsecured Claims:	–	7,698,358		–	–
Banco di Roma	Final distribution of proceeds — Unsecured Claims:	–	2,767,432		–	–

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		From Proceeds Realized from Disposition of:				
To Pay to	*For*	*Fixed Assets*	*Movable Assets*	*Total*	*Exceptions by the Court*	
Banco di Sicilia	Final distribution of proceeds — Unsecured Claims:	–	2,939,449		–	–
Esattoria Comunale Palermo	Final distribution of proceeds — Unsecured Claims:	–	194,540		–	–
INAM	Final distribution of proceeds — Unsecured Claims:	–	165,615		–	–
INPDAI	Final distribution of proceeds — Unsecured Claims:	–	56,871		–	–
IMAIL	Final distribution of proceeds — Unsecured Claims:	–	528		1	528
INPS	Final distribution of proceeds — Unsecured Claims:	–	370,893		–	–
197 listed companies and individuals	Final distribution of proceeds — Unsecured Claims:	–	1,539,187		100	38,276
Raytheon group companies:						
Transistor A.G.	Final distribution of proceeds — Unsecured Claims:	–	973		1	973
Raytheon Europe	Final distribution of proceeds — Unsecured Claims:	–	29,975		–	–
Raytheon Company	Final distribution of proceeds — Unsecured Claims:	–	902		1	902
Raytheon Service Company	Final distribution of proceeds — Unsecured Claims:	–	366		1	366
Total — Attachment B	Final distribution of proceeds — Unsecured Claims:	–	33,434,551	33,434,551	109	43,336
Total		–	404,505,746	404,505,746	114	47,007
Memo: Legal reserves as required per Section 113 of Royal Decree No. 267, 16/3/42		92,724,000	82,000,000	174,224,000		

Attachment C

ELSI S.P.A. EMPLOYEE COUNT AT VARIOUS POINTS DURING THE PERIOD 30 SEPTEMBER 1964 TO 29 MARCH 1968

(Summary)

Description	*9/30/64*	*9/30/65*	*9/30/66*	*9/30/67*	*12/31/67*	*3/29/68*
Administration	11	8	7	6	4	5
Manufacturing	823	591	722	601	565	562
Manufacturing services	143	130	132	122	129	129
Technical services	41	47	57	52	55	60
Marketing	95	65	48	36	57	56
Finance	38	40	38	39	38	35
Industrial relations	34	30	27	24	24	23
Guards and messengers	17	14	14	15	17	18
Total	1,202	925	1,045	895	889	888
Administration	11	8	7	6	4	5
Manufacturing:						
Cathode ray tubes	468	245	329	340	335	332
Magnetron tubes	105	97	97	86	73	72
Semiconductors	136	140	196	79	50	50
X-ray tubes	46	31	34	31	25	25
Lamps/arresters	18	25	11	13	14	14
Comp[illegible] components	–	–	–	–	17	18
Machine shop	50	53	55	52	51	51
Total	823	591	722	601	565	562
Manufacturing services:						
Purchasing and warehousing	51	40	41	37	33	32
Maintenance and service	92	90	91	85	96	97
Total	143	130	132	122	129	129
Technical services:						
Central laboratory	5	6	6	4	5	5
Quality control	36	41	42	35	34	33
General engineering	–	–	9	8	11	14
Planning	–	–	–	5	5	8
Total	41	47	57	52	55	60
Marketing:						
Cathode ray tubes	5	8	14	6	7	8
Magnetron tubes	5	4	6	6	5	5
Semiconductors	–	3	7	4	7	8
X-ray tubes	21	12	6	6	18	16
Lamps/arresters	1	–	–	–	–	–
Marketing management	5	6	15	14	20	19

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Description	*9/30/64*	*9/30/65*	*9/30/66*	*9/30/67*	*12/31/67*	*3/29/68*
Milan sales office	32	21	–	–	–	–
Raytheon-ELSI, A.G.	10	1	–	–	–	–
Raytheon-ELSI, A.B.	16	10	–	–	–	–
Total	95	65	48	36	57	56
Finance:						
Accounting	28	23	19	19	18	16
Treasurer	1	6	8	8	7	7
Export/import	5	5	5	5	5	5
Data processing	4	6	6	7	8	7
Total	38	40	38	39	38	35
Industrial relations:						
Personnel	10	9	6	5	5	5
Payroll	5	4	4	4	4	4
Cafeteria	15	14	14	12	12	12
Industrial relations	4	3	3	3	3	2
Total	34	30	27	24	24	23
Guards and messengers	17	14	14	15	17	18
Grand total	1,202	925	1,045	895	889	888

Annex 31

MINUTES OF RAYTHEON-ELSI, S.P.A., BOARD OF DIRECTORS MEETING, 16 MARCH 1968

[See also pp. 176-177, supra*]*

(Translation)

MINUTES OF MEETING OF THE BOARD OF DIRECTORS HELD ON 16 MARCH 1968, AT 12.00 P.M. AT 6 VIA FERDINANDO DI SAVOIA, ROME, TO DISCUSS AND CONSIDER THE FOLLOWING

AGENDA

1. Report by the Chairman on the financial situation of the company and on the continuation of operations in light of the mandate given to him by the Board at the meeting of Tuesday, 12 March 1968, the possibility of convening a special assembly, and related resolutions.

2. General.

Were present:

For the Board of Directors:

John D. Clare	Chairman
Justin J. Guidi	Managing Director
Engineer Aldo Profumo	Managing Director
Attorney Rinaldo L. Bianchi	Director
Joseph A. Scopelliti	Director
Royal P. Allaire	Director

For the trade union committee:

Dr. Ugo Frediani	President
CPA Dario Fanfoni	Auditor

Excused were:

Auditor Dr. Giuseppe Alabena and the Secretary of the Board of Directors, Dr. Giuseppe Polizzotto.

The Chairman, Mr. John D. Clare, opened the meeting by justifying the convening of the meeting, confirming the legitimacy of the meeting, and asking Attorney Rinaldo L. Bianchi to act as secretary. He then took up the first item of the agenda.

1. Report by the Chairman on the company's financial situation and on the continuation of present activities in light of the mandate given to him by the Board of Directors at the meeting of Tuesday, 12 March 1968, the possibility of calling a special assembly, and related resolutions.

In regard to the mandate received by him and the managing directors at the Meeting of the Board of 12 March 1968, the Chairman reported — on his behalf and that of the managing directors — that the banking institutions that are creditors of the company have been informed of the company's present financial situation and of the need to consider cessation of activities if proven impossible to secure participation of a qualified Italian partner. These institutions have offered active support in the search for such participation, and have also voiced their intention to collaborate with the management at this time to prevent an uncontrollable situation. At the same time, contact has been established with members of the national Government who have promised to support the effort to ensure participation of the IRI group along with that of ESPI. There has also been contact with private industry. Such participation would be acceptable to the stockholders. Although the company has received assurances on various occasions, no tangible development has yet materialized. On the other hand, the Chairman emphasized, the deterioration of the company's financial situation has reached a critical stage that can no longer be ignored. While every conceivable effort has been exerted to resolve the situation, it has now become necessary for the Board prudently to prepare for the cessation of the company's activities and to plan for the final sale of assets under the best possible terms in order to meet the company's financial obligations. The stockholders have been informed of this situation and are aware that cessation of company operations is imminent.

Following wide-ranging discussions, and upon receiving requested clarifications, the Board accepted the report by the Chaiman and the Managing Directors and drafted the following statement.

> "Since the last meeting of the Board, additional efforts have been made by the management to enlist the financial and industrial support of other partners, at the level of Government as well as private industry. Since these efforts have been unsuccessful, and in view of the continuous deterioration of the company's financial situation, the Board of Directors has concluded that there is no alternative to the discontinuation of the company's activities. The stockholders have been informed of the latest developments and have approved the decisions to be taken by the Board today.
>
> After thorough discussion, the Board has unanimously decided the cessation of the company's operations, to be carried out as follows:
>
> 1. production will be discontinued immediately;
> 2. commercial activities and employment contracts will be terminated on 29 March, 1968.
>
> A shareholders' meeting will be called for 28 March 1968, to adopt the necessary formal resolutions.
>
> The Board instructs the managing directors to explain to the trade unions, to the employees' representatives and to all relevant authorities the company's financial situation and the events that have led to the Board's decision."

2. General.

No participant proposed any other point for discussion. There being no other item on the agenda, and no one having asked for the floor, the meeting was adjourned to draft the minutes, and then reconvened to approve them. Following the reading and approval of the minutes, the meeting was closed at 1.30 p.m.

The Secretary
(Signed)

The Chairman
(Signed)

Annex 32

MINUTES OF RAYTHEON-ELSI, S.P.A., SHAREHOLDERS MEETING, 28 MARCH 1968

(Translation)

MINUTES
REPUBLIC OF ITALY

On the twenty-eighth day of March, nineteen hundred and sixty-eight, in my office in Palermo, as indicated below, at the request of Attorney Rinaldo L. Bianchi, born in Highland Park, Michigan, USA, on 4 August 1924, and domiciled as Director of RAYTHEON ELSI S.p.A. at the company's registered office in Via Villagrazia, 79 Palermo, registered with the Office of the Clerk of the Palermo Court under No. 792, Company 6507, Volume 25/71, I, Cesare Di Giovanni, son of the late Salvatore Di Giovanni, Notary Public in Palermo, Via Mariano Stabile, 179, licensed to practice in the District of Palermo, have drafted these minutes of the regular and special General Meeting of the company's shareholders convened today, and announced in the *Official Gazette* No. 55 on 29 February 1968, in the announcement page.

The meeting has been convened with the joint agreement of all the persons here present in my office in Via Mariano Stabile 179, since it could not be held, for reasons of force majeure, at the company's registered office in Via Villagrazia, 79.

Attorney Rinaldo L. Bianchi, whose identity I have personally ascertained in my capacity as Notary, has waived the presence of witnesses to this deed, being legally qualified to do so and with my consent, and has asked me to note that, besides him, the following persons are also present:

Representing the Board of Directors:

— Mr. Royal Phillip Allaire, born in Northampton, Massachusetts, USA, on 12 September 1915, Director;

Representing the Board of Statutory Auditors:

— Dr. Ugo Frediani, born in Orvieto, on 16 April 1913, President;
— Dr. Giuseppe Abbadessa, born in Palermo on 15 April 1913, Auditor;
— Accountant Dario Fanfoni, born in Valmontone on 3 February 1911, Auditor.

Mr. Bianchi also asked me to put on record that the other members of the Board of Directors gave justification for their inability to attend the meeting.

Mr. Bianchi also asked me to put on record that two stockholders are present, namely:

— Raytheon Company of Lexington, Massachusetts, USA, represented by Mr. Jack Ernert Mazzotti, holder of a written power of attorney to this effect, who declares that the company owns 3,966,250 (three million nine hundred sixtysix thousand and two hundred and fifty) stocks of 1,000 lire each, of which 1,966,250 (one million nine hundred sixtysix thousand and two hundred and fifty) are common stocks, marked with the letter "A", and 2,000,000 (two million) shares are preferred stocks, marked with the letter "B";

— Machlett Laboratories Incorporated, Stamford, USA, represented by Mr. Dominic A. Nett, holder of a written power of attorney to this effect, who declares that the company owns 33,750 (thirtythree thousand seven hundred and fifty) common stocks of 1,000 lire each, all marked with the letter "A"; representing the whole capital stock of 4,000,000 (four million) stocks of 1,000 lire each, of which 2,000,000 (two million) are marked with the letter "A" and 2,000,000 (two million) are marked with the letter "B".

As indicated in the notice convening the meeting, these stocks have all been deposited as required by law, according to Mr. Bianchi.

The powers of attorney have been declared valid by Mr. Bianchi, and are to be retained among the company records.

Attorney Rinaldo L. Bianchi was unanimously appointed to chair the meeting and, after ascertaining that the Director, the Auditors and the stockholders indicated above were present, and that the notice of the meeting had been properly issued, declared the meeting validly constituted and resolved to discuss the following:

AGENDA

Regular General Meeting:

1. Report of the Board of Directors and Report of the Board of Statutory Auditors on the financial statements as of 30 September 1967, and supplementary matters. Pertinent resolutions.
2. Establishment of the number and appointment of Directors.
3. Any other business.

Special General Meeting:

1. Losses for the year ended 30 September 1967, and pertinent measures.
2. Any other business.

After calling the meeting to order, the President read the report of the Board of directors, enclosed hereto under the letter "A".

The President of the Board of Statutory Auditors, Dr. Ugo Frediani, then read the Report of the Board of Statutory Auditors, which is enclosed hereto under the letter "B".

The President then read the financial statements (Balance Sheet and Revenue Statement) for the period ended 30 September 1967, enclosed hereto under the letter "C".

After a short discussion, the financial statements for the year ended 30 September 1967, and the pertinent Reports were unanimously approved, and the Directors fully discharged.

The stockholder, Raytheon Company, requested the floor. Its representative proposed that, since the whole proprietorship was represented at the meeting, together with the full Board of Statutory Auditors and the Directors as indicated above, the Assembly should deal with the second item on the agenda of the Special General Meeting, and amend Article 7 (seven) of the Bylaws to provide that the Board of Directors be composed of no less than three and no more than nine Directors.

The Assembly, noted that the Board of Statutory Auditors was in favor, unanimously resolved to amend the first paragraph of Article 7 (seven) of the Bylaws to read:

> "The company shall be managed by a Board of Directors composed of no less than three and no more than nine members, of whom at least one shall be appointed by the holders of 'B' stocks."

The rest of the Article will remain unchanged.

Going back to the second item on the agenda of the Regular General Meeting, the President announced that the Board of Directors had to be replaced having reached the end of its term of office, and invited the Assembly to adopt a pertinent resolution. Since the meeting was constituted in compliance with Article 7 (seven), paragraph 2 of the Bylaws, the following was unanimously adopted:

RESOLUTION

— To appoint five (5) Directors to the Board, who will remain in office until the adoption of the Financial Statements for the year ending 30 September 1968;
— To appoint the following Directors:

(A) for the common stock marked with the letter "A":

Mr. John Dickens Clare, born in Birmingham (UK), on 21 January 1920;
Mr. Joseph Oppenheim, born in Boston, Massachusetts, USA, on 23 November 1914;
Mr. Justin Joseph Guidi, born in New Alexandria, Pennsylvania, on 16 November 1924;
Mr. Royal Phillip Allaire, born in Northampton, Massachusetts, on 12 September 1915;

(B) for the preferred stock marked with the letter "B", Mr. Aldo Profumo, born in Genoa on 15 October 1917.

Pursuant to the provisions of Article 7 of the Bylaws amended as indicated above, the Assembly unanimously empowered the Board to refrain from replacing a minority of retiring Directors, so that, even with at least three Directors, the Board could legally manage the company with the full power conferred to them by law and by the Bylaws.

The Assembly also unanimously resolved on the following appointments, unless otherwise resolved by the Board of Directors: Mr. John Dickens Clare, President, Mr. Joseph J. Guidi and Mr. Aldo Profumo, Managing Directors. The Assembly also resolved, unless otherwise resolved by the Board of Directors, to confirm the powers and duties conferred on President Clare, and Managing Directors Guidi and Profumo at the Board Meeting held on 29 November 1967.

There being no other business, the Regular General Meeting was adjourned, and the Special Meeting called to order. The Chairman read the sections of the Board of Directors' Report relating to the Special agenda, which is enclosed hereto under the letter "D".

The Chairman of the Board of Statutory Auditors then read the sections of the Board of Statutory Auditors' Report relating to the special agenda, which is enclosed hereto under the letter "E".

The stockholder, Raytheon Company, through its above indicated representative, was given the floor and moved the following:

RESOLUTION

> "The Assembly, having heard the Report of the Board of Directors and having taken note of the comments of the Board of Statutory Auditors, unanimously resolves:

1. To adopt the Report of the Board of Directors;
2. To ratify the resolutions adopted by the Board of Directors at the meeting of 16 March 1968, and hence to agree that the Company cease operations, and accordingly empower the Board of Directors, and for it the Directors, Justin J. Guidi and Aldo Profumo, jointly or severally, to cease operations on 29 March 1968 and to dismiss the employees, except those engaged in administrative, maintenance, security and miscellaneous duties which are deemed to be necessary on a temporary basis during the period leading to the total termination of the company;
3. To empower the Board of Directors to make contacts with the banks and principal creditors of the company to reach an agreement on the procedures to be followed to dispose of the company's assets in an orderly manner and at their highest realizable value in the interest of all creditors;
4. To further empower the Directors to convene the General Meeting at an appropriate time, in order to give a progress report on the state of the company, and for any necessary resolution to be taken in reference thereto."

The above resolution moved by the representative of the Raytheon Company, was unanimously adopted by the Assembly which empowered the Managing Directors to make any amendments, additions or deletions to these minutes, jointly or severally, which may be requested by the authorities when issuing an authorization.

There being no further business, the Chairman adjourned the meeting.

(Notary's customary declaration, handwritten and partially illegible)

Annex 33

REQUISITION DECREE, MAYOR OF THE MUNICIPALITY OF PALERMO, 1 APRIL 1968

[See p. 39, supra*]*

Annex 34

Article 7 of Law of 20 March 1865, No. 2248, Attachment E

(Translation)

LAW OF 20 MARCH 1865, NO. 2248, ATTACHMENT E, RELATIVE TO ABOLITION OF ADMINISTRATIVE LITIGATION

. . . .

7. When, because of grave public necessity, the administrative authorities must dispose of private property without delay or, pending a court case for the same reason, proceed to enforce a measure whose legal consequences are the subject of the dispute, the administrative authorities will proceed by means of a decree indicating the reasons, without prejudice to the rights of the parties.

Annex 35

PRESIDENTIAL DECREE OF 29 OCTOBER 1955, N. 6

(Translation)

PRESIDENTIAL DECREE LAW OF 29 OCTOBER, 1955 N. 6 — ADMINISTRATIVE ORGANIZATION OF LOCAL GOVERNMENT BODIES IN THE SICILIAN REGION (*OFFICIAL GAZETTE*, 26 NOVEMBER 1955, N. 65, SUPP.)

. . . .

69. (Orders based on emergencies and urgency.) The Mayor issues emergency and urgent orders in matters of civil works, local police and health for reasons of public health and safety.

Except in case of impossibility due to urgency, such orders must be notified by service to the interested parties with an injunction ordering compliance with the relative orders within a fixed term. Upon expiration of said term, the orders are enforced at the expense of the interested parties without prejudice to any criminal prosecution if the facts constitute a crime.

The bill for expenses is made final and enforceable by the Provincial Control Commission, to which any interested parties may present observations within 20 days from the date of notification of the bill.

After one month from the date of finalisation and enforceability of the bill, the Mayor delivers the bill to the tax collector for collection by him following the procedures and with entitlement to the tax liens which the law grants in the case of collection procedures for income taxes.

Annex 36

Appeal by Raytheon-ELSI, S.p.A., to the Prefect of Palermo of Requisition Decree of the Mayor of Palermo, Dated 19 April 1968

(Translation)

APPEAL [TO HIGHER ADMINISTRATIVE AUTHORITY]

To His Excellency the Prefect of Palermo

appeals Raytheon-ELSI S.p.A. by its Managing Director Mr. Justin J. Guidi, with registered office in Palermo — Via di Villagrazia n. 79 . . . with domicile elected c/o Prof. Avv. Luigi Galateria and Avv. Giuseppe Bisconti in Rome, Via Bissolati 76 (c/o Studio Legale Bisconti)

against the City of Palermo in the person of the Mayor in Office,

for the annulment of the order of 1 April 1968, served on 2 April 1968, which "orders the requisition with immediate effect and for a period of 6 months, save for necessary extensions and without prejudice to the rights of the parties and of third parties, of the plant and relative equipment owned by Raytheon-ELSI S.p.A.".

By deed of Notary Vito di Giovanni of Palermo on 18 May 1954, Elettronica Sicula (ELSI) was organized, having as its object the production of electronic products. Said company built a plant in Palermo in 1956 for the production of the aforementioned products and started its activity in November 1956. For such purpose, about one hundred white collar employees and workers were hired in Palermo.

In 1959 Societa' Elettronica Italiana p.a. (SELIT) was organized, with registered office in Palermo.

Subsequently, ELSI purchased all the shares of SELIT and Raytheon Company with registered office in Lexington, Mass., USA, purchased the majority of the capital stock of ELSI, whose name was changed into Raytheon-ELSI S.p.A.

Subsequently, SELIT was merged into ELSI by deed of 30 March 1965.

As a consequence of the capital contribution of Raytheon Company, the production of the original plant and of the subsequent plants was increased to the point that about 1,000 white-collar employees and workers were employed.

Despite very large capital contributions and modern facilities, for many years the company has suffered very great losses, due to a series of reasons which cannot be properly examined here (such as the imbalance between production costs and market prices, excess of employees in comparison with the volume of production, etc.). The company, however, aware of the fact that it was important for Sicily and for Palermo that the company continue to operate, induced its shareholders to invest at various times several billion liras with the precise purpose of preventing the cessation of the activities of the Palermo plant.

During the last 12 months, the management has made great efforts in order to obtain financial and industrial interventions, both public and private, unfortunately without success.

We cannot refrain from calling attention to the pressing and repeated requests that have been addressed both to the Central and to the Regional Governments urging them to intervene in some way in order to rescue a situation which appeared very grave.

In particular, the intervention of IRI and of Ente Siciliano per la Produzione Industriale (ESPI) were requested, but all efforts aimed at the obtaining of said financial and industrial interventions, and also of contracts from government or government-owned sources have gone unheeded.

The inertia of both the Central and the Regional Government appears to be even more serious when one considers that the economic planning for industrial development of the South is based in a substantial way on the electronic sector.

Its efforts having met with failure, the company with great regret found itself forced to cease its activities and consequently dismiss its personnel.

By order dated 1 April the Mayor of Palermo ordered the requisition of the plant and of the equipment.

Against such order, which seriously prejudices its economic interests, Raytheon-ELSI files this appeal to the Prefect of Palermo based on the following

LEGAL GROUNDS

(1) *Violation of Article 7 of Law N. 2248, Schedule E, of 20 March 1865, and of Article 69 of D.L.P. N. 6 of 21 October 1955, on the Administrative Organization of Local Government in the Region of Sicily*

The Mayor of Palermo based his order for the requisition of the plant and of the equipment owned by Raytheon-ELSI on Articles 7 and 69 above cited.

Authoritative cases and legal scholars hold that Article 7 does not grant a *specific* and *autonomous* power to take away property, even less so a power to requisition property; it only constitutes the statement of a principle (the administrative authority may dispose of private property in the event a serious necessity arises) of a general nature which is implemented in other provisions of law which govern specific cases (requisitions, condemnations, occupations, etc.).

The general nature of Article 7 is obvious in that it does not specify the administrative authority, the purposes, the limitations and the procedure that the public administration must observe in exercising such power.

Said general nature requires that the principle be implemented by other *specific rules* which specify and almost typify the various instances in which the public administration may exercise its powers, indicating the bases, the purposes, the limitations, etc., for such exercise of powers.

Therefore, if it is true, as it is believed to be true that Article 7 does not provide rules for a *specific* power to take away property, the consequence is that the Mayor, in issuing this order, could not refer to Article 7, but, on the contrary, should have referred to and applied the special rules governing requisitions.

On this point, the Council of State, by decision rendered on 23 November 1929 by Plenary Meeting stated:

> "It is appropriate to remember that the interpretation of Article 7 has given rise to doubts. The doubt has arisen whether it grants to the Administrative Authority in general a power to dispose of private property for serious and urgent necessity without complying in the exercise of their powers with the ordinary procedures set forth in statutes and regulations or, assuming that such power is granted to it, it governs only the civil consequences of a private nature with reference to the rights of the parties. The decisions of this administrative tribunal, which this Plenary Meeting does not deem proper to reverse, are consolidated in holding that *in view of the normal jurisdiction of judicial courts, the authorization granted generically, by way of*

> *[general] principle, to the Public Administration by said Article 7 is not sufficient* to render lawful the use of this power by any administrative body, it being necessary on the contrary that such power be granted to them by other laws. Nor could the lawmaker have intended to grant to administrative bodies powers they did not already have in a statute whose sole purpose was to define the respective competence of the Judiciary and of the Administrative Tribunals."

Nor could the Mayor of Palermo in this case refer to Article 69 of D.L.P. No. 6 of 21 October 1955, because such provision may be applied only when no specific law is applicable and not when special laws exist, as those governing requisitions (see on this the decision of the Court of Cassation, Joint Session, of 6 May 1964, No. 1954, *Caianello et al.* in *Giurisprudenza Amminstrativa e Tributaria della Cassazione Civile* (1936-1965); Bologna-Rome, 1967, p. 2031, No. 148).

Now, considering that requisition is governed under Italian law by a vast and specific body of statutes, in order to requisition the plant of appellant the Mayor of Palermo should have referred to and applied the provisions of law concerning requisitions instead of referring to provisions which provide generally for emergency and urgent orders.

(2) *Violation of Article 7 of Law No. 2248, Schedule E, of 20 March 1865 — Excess of Authority by Reason of Lack of Competence*

Despite the generality of Article 7, as above illustrated, Prefects are competent to issue orders thereunder. This construction is suggested by various considerations and by the decisive circumstance that Law No. 996 of 30 November 1950, which constitutes a legislative interpretation of the aforementioned Article 7, provides: "The orders *issued by the Prefects* in the exercise of the powers set forth in Article 7 of Law No. 2248, Schedule E, of 20 March 1865, are definitive orders." Since there is no mention of orders issued by the Mayor under Article 7, it is appropriate to hold that he has no powers to issue them.

But, even assuming — without conceding — that the Mayor has such power, the Mayor may exercise it only when the urgency and the circumstances are such as to prevent him from causing the Prefect to issue the order. On this point, the Council of State and the Council of Administrative Justice of the Region of Sicily are in agreement.

> "The Prefect — it is stated in various decisions (Council of Administrative Justice for the Sicilian Region, 27 November, 1948, No. 25; ditto, 30 November 1948, No. 28; ditto, 16 February 1950, No. 29 in *Il Diritto Pubblico della Regione Siciliana*, 1949, p. 29, and 1950, p. 29; ditto, 11 June 1956, No. 212), an offspring and principal representative of the Executive Branch in the province *is the agent which is particularly competent to issue the emergency and urgent orders*, which in similar circumstances the law attributes generically to the Executive Branch. No doubt, the Mayor too, as an officer of the Government, is authorized to issue orders of such nature but, *since in such instance he would exercise a power in substitution for the Prefect, he may do so only when the urgency is such as to prevent him from promoting the natural intervention of the Prefect. Such condition does not exist if the Prefect has his office in the same town as the Mayor who has issued the order and the Mayor has been long aware of the necessity which was intended to be covered by means of the requisition.*" (See Landi, *Rass. Giur. sulla Espropr.*, per P. U. Giuffrè, Milan, 1955, p. 372.)

In this instance, such conditions do not exist, especially if we consider the fact that the Prefect of Palermo had been directly informed by the officers of the company of the resolution to dismiss the employees at least ten days before the actual dismissal. The Mayor was therefore not entitled to exercise such power in the absence of the necessary conditions as above pointed out.

(3) Violation of Article 69 of D.L.P. of 29 October 1955

Article 69 provides as follows:

> "*Except in cases of impossibility due to urgency, said orders must be notified by service to the interested parties with an injunction ordering compliance with the relative orders within a fixed term.* Upon expiration of said term, the orders are enforced at the expense of the interested parties without prejudice to any criminal prosecution in the event the facts constitute a crime. The expense bill is made final and enforceable by the Provincial Control Commission to which interested parties may within 20 days from service of the bill present observations. After one month from the finalization of the bill, the Mayor delivers the bill to the tax collector for collection by him following the procedures and with entitlement to the tax liens which the law grants in the case of collection procedures for income taxes."

The above-quoted provision clearly shows that the Mayor, in the absence of impossibility due to urgency, which in our case did not exist, had the precise duty of serving appellant with an order to reopen the plant, fixing a term, before issuing an order of requisition.

On the contrary, the Mayor ordered the requisition in clear violation of Article 69 and the principle of entitlement to open debate and of principle of protection of rights.

(4) Excess of Authority by Reason of Lack of, and Mistaken Legal Grounds

Requisition orders, not unlike every other disposition of private property, must be based on urgency and grave necessity.

The order of the Mayor, in order to justify the serious order issued against appellant, states that the shutdown of the plant and the dismissal of the employees "caused the reaction of the employees and of labor unions which took the form of industry and general strikes".

The above statement is not entirely true. There has been no strike, neither at the industry level nor general, there has been no violence either to persons or to property, there has been no occupation of the plant as a consequence of the dismissals.

The truth is that on 30 March 1968, that is, the same day the dismissal letters were delivered, a group of representatives of the personnel went to the plant to talk with some executives and peacefully remained thereafter all day on the premises of the plant.

The following days a meagre group of employees wandered within the premises of the plant without giving rise to any incident whatsoever.

It is therefore quite clear that the above episodes do not constitute the situation of serious necessity which the law requires to exist before a requisition order may be lawfully issued.

It is also stated in the order that "the situation is particularly alarmed and sensitive and therefore it cannot be excluded that serious acts in breach of the public order may occur".

The above statement does not constitute a valid reason for the issuance of the order.

In fact, it has been constantly held by the Council of State (Fifth Section, 15 September 1960; Fifth Section, 3 June 1950, No. 692), that the serious public necessity must be *real* and not merely supposed and that requisitions determined by *the mere subjective fear that a breach of the public order may occur must be held to be unlawful.*

(5) Excess of Authority by Reason of Its Use for Other Objectives

The order appealed is also unlawful under another aspect. No doubt the taking away of property from citizens constitutes the most severe measure that the Administration may take as it is aimed at depriving of property or limiting its free disposability. Now, for the very reason that these measures are so severe and coercive the Administration *has the duty*, before issuing such orders, to do all it can to achieve its purposes with the least possible sacrifice for the citizens and, if possible, without resorting to coercive measures.

In this instance, the Central and the Regional Government and the City of Palermo, if they really wanted to protect the public *economic* interest of the Sicilian Region, should have promoted the indispensable public interventions repeatedly invoked by the company. It is truly significant that, among the reasons given for the requisition order, it is stated that "the city press is giving ample space to the situation and criticizes bitterly the responsible authorities who are even accused of being unresponsive to the serious problems of the city".

The fact that the objective sought to be pursued with the appealed order is different from the objective allegedly sought is almost proved by the wording of the order itself . . .! First, the public authorities remain passive despite having been fully aware for a long time of the serious financial condition of the company and despite its pressing pleas; then, when they begin to fear that public opinion may accuse them of inertia, in order to avoid any responsibility they discover the brilliant . . . solution of the requisition order, without the slightest concern for the serious violation of private property rights and without the slightest concern for the consequences that the requisition order may have for the economy of the Region, both in itself and because of its national and international consequences. Furthermore, the order is not suitable to satisfy the public economic interest of the Region since the plant will be deprived of its vital elements, that is to say the technical assistance and the services of highly qualified technical personnel such as Raytheon's personnel. Finally, it is self-evident that the requisition order cannot create . . . favorable market conditions for electronic products capable of solving the financial and industrial problems of the company.

For the above reasons:

May it please His Excellency the Prefect of Palermo to suspend and annul the appealed order with all legal consequences.

RAYTHEON-ELSI S.p.A.
Managing Director,
(Signed) Justin J. GUIDI.

Mr. Justin J. Guidi, Managing Director and legal representative of RAYTHEON-ELSI S.p.A., with registered office in Palermo, Via di Villa Grazia No. 79, whose personal identity, qualification and powers I Notary am personally certain, having renounced the assistance of witnesses has signed at the bottom of this appeal and in the margin of the other two sheets in my presence.

Rome, 19 (nineteen) April 1968 (one thousand nine hundred sixty-eight).

(Signed) Andrea GIULIANI (Notary in Rome).

NOTIFICATION REPORT

. . . (Omissis).

Annex 37

MINUTES OF MEETING IN PALERMO BETWEEN MESSRS. JOSEPH OPPENHEIM, HOWARD HENSLEIGH, STANLEY HILLYER AND PRESIDENT CAROLLO OF SICILY, 19/20 APRIL 1968

Company Private,
21 April 1968.

To: Mr. Joseph Oppenheim
From: S. H. Hillyer
Re: Palermo meetings 19/20 April.

I. First Meeting

Messrs. Oppenheim, Hensleigh and Hillyer met with President Carollo of the Sicilian Region and his private secretary, Sig. Iamicelli, at 6 p.m., 19 April. The meeting had been arranged at the request of the Hon. Carollo.

The Hon. Carollo opened the meeting by saying that he was sure we had seen the newspapers, and that we knew that the Regional and Central Governments had reached agreement to form a management company with IRI participation to operate ELSI. He asked if we would join the management company as a 30 per cent, 40 per cent or 50 per cent partner.

Mr. Hillyer, before translating, asked what sort of participation was requested from Raytheon — capital? Availability of the plant and equipment? Management? The Hon. Carollo replied that the management company would expect to have the plant and equipment made available, for a nominal rent of perhaps one lira, and that it would hope to use the Raytheon management team and sales organization with appropriate compensation. He added that the plant and equipment are without value as long as the plant remains closed.

Mr. Oppenheim stated that ELSI can recover money to meet its obligations only by selling the physical assets, and that we cannot compensate our creditors unless a sale of these assets is envisaged.

The Hon. Carollo replied that while the plant remains closed, no one will buy it and it has no value. The Region, the Central Government and IRI will oppose a sale to such a point that no private Italian organization would buy the plant. He did admit that if an appropriate foreign purchaser could be found, a sale could be made, quite probably with the blessing of the Region.

Mr. Oppenheim asked what we should tell our banks if we accept the management company hypothesis.

The Hon. Carollo replied as follows: (1) tell the banks that as long as the factory is operating, it has value to guarantee your obligations; (2) if you do not join the management company, the factory will remain requisitioned and without value, no matter how many telegrams Raytheon may send to the authorities; and (3) as the Region will pay part of the salaries of the personnel, no large losses should be incurred. On these grounds, and with the moral help of the Region, the banks will co-operate with you.

Mr. Oppenheim asked if the management company would take any responsibility for ELSI's past debts.

The Hon. Carollo replied no. The past is Raytheon's responsibility. However, if Raytheon leaves ELSI closed, the Region, the banks, the Italian Government, and IRI will all be against Raytheon, and at most we might get 1 billion lire for all the assets. If the plant is kept open, our objective of obtaining 11 billion lire in liquidation of the assets is much more obtainable.

Mr. Oppenheim asked the Hon. Carollo to put himself in Raytheon's place, and to tell us why Raytheon would not be better off to shut now and take its present loss, instead of going on two more years and losing more money, only to shut down then (as we understand that IRI has no intention of keeping ELSI going on a permanent basis). The Hon. Carollo replied with the following four reasons why Raytheon should keep going:

1. While IRI wishes to run ELSI for only two years until IRI's new telephone switching plant is built in Palermo, the management company could of course become permanent if it is a success. Judging by Raytheon's own reports, it may well be successful.
2. You would like to sell your assets for 11 billion lire to cover that much of your 16 billion lire of debts. With the plant closed, you will get nothing close to 11 billion lire. The assets are not worth what you say (the figures of 6 billion lire of inventory and 2 or 3 billion lire of land and buildings were specifically cited as inflated), and with the opposition of the Region no Italian company will buy from you.
3. If you will help us keep the plant open, both the Region and the Central Government will devote every effort to helping you sell out advantageously. It is probable that in four or five months you will be able to sell for perhaps 80 per cent of what you are asking, with our help.
4. If you go into bankruptcy, remember that ELSI's bank debt was negotiated by responsible Raytheon managers, and even if long legal proceedings are necessary on an international level, Raytheon must pay this debt. You have other assets in Italy; as a very first step it will be easy for the banks to block any foreign exchange permits for your Selenia royalties. In general, bankruptcy will morally blacken Raytheon's name in Italy and in Europe.

Mr. Oppenheim asked if we would be free to sell the assets while the management company was running ELSI. The Hon. Carollo replied yes, provided the purchaser intended to continue operating the business. He added again that the Region, the Central Government, and IRI would actively help us find a suitable purchaser.

Mr. Oppenheim said that we are therefore given two choices, either putting in more money or taking a morally indefensible position.

The Hon. Carollo agreed that the choice is difficult, but asked why we have taken losses of 3 billion lire a year on sales of 7 billion without complaint. Mr. Oppenheim replied that probably we should have shut down three years ago, but did not because we felt that the situation could be corrected.

The Hon. Carollo stated that the Region now has a single goal, to keep the workers employed. If Raytheon will co-operate to achieve this goal, we in turn will receive all possible help in liquidating advantageously from Moro (Prime Minister), Pieraccini (Budget Minister), Andreotti (Minister of Industry), and of course the Region. IRI probably will not help; they are in just to keep ELSI's labour force together until their own plant is ready to start operation in Palermo.

Mr. Oppenheim said that while he understands the Region's position, he has obtained no new or constructive information to submit to his management from this talk.

The Hon. Carollo said that if we will stick with him for four to six months, he is morally certain he can put together a group which will buy the assets at about 80 per cent of our valuation. Otherwise, if we go bankrupt now, we will get nothing for the assets, and will have to pay all the debts. He stated that the Italian Government was offended at the brusque manner in which the US Embassy replied to the appeal to halt the sending of the letters of dismissal to ELSI's employees, and that our Embassy will not be listened to sympathetically if it tries to help us.

However, if we go on, the microwave tube line will be in good shape, as the Central Government has promised to add 2 billion lire in tubes to the defense budget. There is a definite possibility of selling the CRT line within 6 months (purchaser unnamed, but from asides probably Voxson). The X-ray tube line is more difficult, but probably can be sold.

Mr. Oppenheim asked what financial responsibility the management company would take.

It was clear that the Hon. Carollo did not have a detailed conception of the manner in which the management company would work. However, he did make it clear that it will *not* pay financial charges for the past (although it might help obtain a moratorium on interest), it will pay only a nominal rent for plant facilities, but it will pay all current operating expenses. Furthermore, the Region will pay the wages of 300 workers, leaving the management company responsible for only the 700 employees we desired. Thus losses will be cut to a minimum, perhaps only 200/300 million lire in the six months necessary to sell the assets, and Raytheon would bear only 30-40 per cent of this loss. Furthermore, the management company will assist in selling existing inventory, to Raytheon's sale advantage.

Mr. Oppenheim asked why we were needed in the management company at all, as losses will be so modest. Mr. Hensleigh asked whether the new company would run ELSI as presently constituted.

The Hon. Carollo said there is a moral need for our participation, to maintain a friendly atmosphere. Furthermore, a guarantee of our support in the marketing area is necessary. The management company would rent ELSI's plant from ELSI, and would hire the labor force directly (again, it was clear that the details of the management company have not been thought out). If we participate in the management company, the Region will see to it that ELSI's creditors delay their demands for payment. If we liquidate, we will have to pay everything now.

Mr. Oppenheim said that he still did not have any specific figures to take back to Lexington.

The Hon. Carollo said that he would be pleased to write a memorandum to help, which could be ready by 5.30 p.m. the next day.

Mr. Oppenheim requested that the following specific points be included in the memorandum:

1. Maximum time interval before sale of assets (4-6 months mentioned in talks).
2. Minimum sale price of assets (80 per cent of 11 billion lire mentioned in talks), and how Raytheon could be guaranteed at least this price.
3. Maximum amount of Raytheon's share of the operating losses of the management company (this point was not heard in the cross-talk, and was not translated to the Hon. Carollo).

The Hon. Carollo noted down points (1) and (2) above, stating that he could not express firm commitments but could only express his best personal judgment. Mr. Oppenheim asked him to do this as positively as possible. The meeting ended cordially, with Messrs. Carollo and Oppenheim offering to swap jobs and responsibilities.

II. Raytheon Interlude

Over dinner Messrs. Oppenheim, Hensleigh and Hillyer discussed the meeting, and it became clear that Mr. Oppenheim's third point for the Hon. Carollo's memorandum had not been translated. It was decided that Mr. Hillyer would stay overnight in Palermo, get the third point through to the Hon. Carollo, and pick up the memorandum the following afternoon.

Mr. Hillyer gave written instructions to the hotel porter to get through to the Hon. Carollo on the telephone by 10 a.m. Saturday at latest. (Should these instructions ever turn up, they will sound cloak-and-daggerish, as they emphasized that no name was to be given to anyone but the Hon. Carollo, in order to avoid any leak to Profumo.)

It was not possible to get through to the Hon. Carollo, but his Cabinet Secretary, Dr. La Commari, left word that a car would be sent to pick up the anonymous gentleman from Raytheon at 1 p.m.

III. Second Meeting

Dr. Zito, press agent of the Region, picked me up somewhat after 1 p.m., 20 April, and drove me to the Hon. Carollo's house. At 2.30 p.m. the Hon. Carollo arrived with apologies, and immediately emphasized that Raytheon would have to accept at least a 40 per cent share in the management company.

I stated that this was probably not a determining factor in our thinking, and that our real need was for a truly positive answer to Mr. Oppenheim's three questions, which I went through in detail. I also stated that a clear description of what would happen if we closed down would impress our management, and that Mr. Oppenheim would doubtless hand-carry the letter to Lexington if any possible solution emerged from its contents.

The Hon. Carollo listened, understood, and promised to have the letter ready at 5.30 p.m. at his office.

IV. Third Meeting

The Hon. Carollo reached his office at 7 p.m., 20 April, and received me immediately with apologies. He produced a manuscript draft from his pocket and asked me to listen to it and give him my comments.

I limited my initial comments to the fact that the document contained no specific or even general commitment relative to the three points defined by Mr. Oppenheim, which had been carefully reviewed just four hours before. The Hon. Carollo agreed that this was so, but stated that as a serious and honest person he could not set down in writing a firm commitment he might not be able to follow through on. His personal opinion is very strong that events will develop favorably as he told Mr. Oppenheim, but he cannot sign his name to any statement of this opinion.

I asked if he felt IRI would help us achieve the goals we described. He stated that apparently during the past year, IRI has developed a violent anti-Raytheon feeling, and that we have urgent need of mending our fences with IRI. If we drop out of ELSI, IRI will take this as yet another demonstration of Raytheon's opportunism, and we can expect to see IRI making every effort to achieve closer ties with CSP/CFTH and to sever its Raytheon connections. If we can succeed in running the ELSI management company and in improving our rapport with IRI, we have an excellent chance of maintaining a dominant position in Italy.

Otherwise we can count ourselves wholly out of Italy and much weakened elsewhere in Europe.

The only change the Hon. Carollo made in his draft as a result of my clear expression of disappointment was to add to point (5) on page 2 that the sale of ELSI's assets will be concluded "in the shortest time possible". The typed and signed memorandum was handed to me at 8.20 p.m., 20 April.

Annex 38

MEMORANDUM FROM THE PRESIDENT OF THE SICILIAN REGION, 20 APRIL 1968

[See also I.C.J. Reports 1989, *pp. 34-35]*

20 April 1968.

MEMO OF THE PRESIDENT OF THE REGION TO THE COMPANY RAYTHEON ELSI

I deem it my duty, in the situation as it has developed, to provide Raytheon Company with some fundamental elements of judgment so that the irreparable can be avoided.

On the premise that the intent of the Company is that of liquidating ELSI, I shall herein explain the reasons why it is absolutely impossible that this can take place for the time being.

(1) Nobody in Italy shall purchase, that is to say IRI shall not purchase, neither for a low nor for a high price the Region shall not purchase, private enterprise shall not purchase. Let me add that the Region and IRI and anybody else who has any possibility to influence the market will refuse in the most absolute manner to favor any sale while the plant is closed.

(2) The Banks which have outstanding credits for approximately 16 billion Lire, cannot and will not accept any settlement even at the cost of dragging the Company into litigation on an international level. I mean to refer to Raytheon and not to ELSI because the distinction between ELSI and Raytheon is not found to be admissible since any and all financing was granted to ELSI based on the moral guarantee of Raytheon, whose executives have always negotiated said financing.

(3) Anyway, it is known in Italy that one can enforce the claims directly against Raytheon because it has interests and revenues in our country also outside ELSI.

It is obvious that every attempt will be made (even at the cost of long litigation) to obtain from Raytheon what is owed by ELSI.

(4) In the event that the plant shall be kept closed, waiting for Italian buyers who will never materialize, the requisition shall be maintained at least until the courts will have resolved the case. Months shall go by.

On the other hand the Italian Government had responsibly solicited the US Government to make a cordial intervention with Raytheon Company at the time the latter was readying itself to send the letters of dismissal (of employees and workers).

The US Government had a negative reply and forwarded it curtly to the Italian Government which was seriously disappointed.

Taking into account all the above reasons which would put Raytheon into an obvious situation of moral isolation, I shall now illustrate the reasons which in my opinion would improve the situation in every respect both moral and financial.

(1) A plant in full operation is worth much more than a closed one or one which is in the midst of a great conflict isolating morally Raytheon both in Italy and in Europe.

(2) The plant can be kept open through the formation of a provisional management company organized by IRI, the Region and Raytheon. In such case there

shall not be necessary any further capital investment since the nature and the purposes of the management company would not require it necessarily. At the end of each fiscal year the operational losses shall be computed and allocated amongst the shareholders. Taking into account the fact that IRI would have a participation of 10-20 per cent, the Region a participation of 40 per cent and Raytheon a participation of 40 per cent, Raytheon would make an initial gain represented by a diminution of 60 per cent of the losses incurred until today.

(3) In the meantime the Region has approved a law taking on itself the burden of paying for a period of five months the salaries of the workers that were dismissed at an earlier date, that is to say in December.

(4) In the climate of new cordiality the situation also can improve because of a greater willingness to help by the Region, by IRI itself, by the Banks, by private enterprise, that have shown certain interest for ELSI. It is known that the Italian Ministry of Defense must place orders for microwave tubes and it can also place orders with ELSI, therefore increasing its sales and diminishing its losses.

(5) Everybody, including the Region and IRI, shall be ready to help Raytheon in the meantime to liquidate ELSI through a useful sale in the shortest possible time.

In substance any losses, even if allocated in rather reduced terms to Raytheon shall certainly be diminished with regard to the losses of the prior years because of the concurrence of so many favorable circumstances represented by the commitments of the Region, IRI, the Banks and private enterprise.

The gain shall be certain for Raytheon as far as the figures go and the prospective gain shall be greater taking into account the fundamental objective of Raytheon which remains after all the liquidation.

For these reasons I take the liberty of suggesting and recommending the formation of the management company through the natural and necessary participation of Raytheon in a proportion of at least 40 per cent.

Annex 39

LETTER FROM JOSEPH OPPENHEIM, CHAIRMAN OF THE BOARD, RAYTHEON-ELSI, S.P.A., TO HON. VINCENZO CAROLLO, PRESIDENT OF THE SICILIAN REGION, DATED 26 APRIL 1968

26 April 1968.

Hon. Vincenzo Carollo
Presidente della Giunta
Regionale Siciliana
Palermo

My dear Mr. President:

The proposal contained in your memorandum delivered to us on 20 April 1968 received all due consideration by everyone involved.

Regrettably your proposal to form a management company was a temporary caretaker measure which would not solve the fundamental problem, namely keeping ELSI in Sicily and making it a viable and vital industry. For this reason, we find it impossible to accept it.

It is sad to see that after all our investment over the years, and all our appeals during the last year to public agencies and private industry to join us in putting new blood into a Sicilian industry, the only responses were the requisitioning of our plant and a proposal which would only aggravate ELSI's critical financial condition.

We are therefore forced to file voluntary petition for bankruptcy, as required by Italian law. We are thereby assuming our responsibilities under the law.

We are grateful for your efforts and I was personally most pleased to have met you.

Sincerely yours,
RAYTHEON-ELSI S.P.A.,
(Signed) Joseph OPPENHEIM,
Chairman of the Board.

Annex 40

Affidavit of Charles H. Resnick, General Counsel, Raytheon Company, Dated 19 January 1987

I, Charles, H. Resnick, personally appeared before R. Joseph D'Avignon, a notary public in and for the Commonwealth of Massachusetts, on 19 January 1987, and, upon being duly sworn, stated that:

1. My name is Charles H. Resnick. I am Senior Vice-President, General Counsel and Corporate Secretary of Raytheon Company. I am making this affidavit entirely from personal knowledge.

2. From 1951 to 1963, I served as an attorney in Raytheon's Office of the General Counsel. I was appointed General Attorney and Secretary of Raytheon in September 1963. In October 1964, I became Raytheon's Secretary and General Counsel and was promoted to Vice-President in February 1968. I was made Senior Vice-President in May 1985. As General Counsel, I am a member of Raytheon's senior management and am ultimately responsible for all legal matters affecting the Company.

3. I have closely followed and participated in Raytheon's major decisions affecting Elettronica Sicula ("ELSI"). During 1967 and 1968, I followed closely all significant developments with respect to ELSI and Raytheon's planning and decision-making in that regard, since these matters were regularly reported to the Board of Directors and also because, as a senior management official, I regularly participated in management meetings at which ELSI was discussed. I was also consulted by Raytheon's management with respect to the legal aspects of decisions concerning ELSI.

4. I was regularly advised of and consulted on questions relating to the possible liquidation of ELSI. Raytheon had determined in March of 1968 that, as a matter of sound business judgment, such a liquidation would be necessary if it appeared that ELSI could not be made profitable despite the efforts being made to find an Italian partner or otherwise assure ELSI's future. Accordingly, ELSI's management began to plan in 1968 for an orderly liquidation of ELSI's assets. Until the requisition of ELSI's assets by the Government of Italy, Raytheon's management had never considered the possibility of bankruptcy for ELSI. I can state this categorically because this would be a most significant and unprecedented legal action on which I would have been consulted. Although Raytheon had liquidated or sold some of its other investments, none of Raytheon's wholly or partially owned subsidiaries had ever been placed into bankruptcy prior to the ELSI petition of 26 April 1968. Once ELSI's assets were requisitioned on 1 April 1968, however, Raytheon's Italian lawyers recommended that ELSI consider declaring bankruptcy.

5. In early 1968, Raytheon had sent to Italy a team of experts, headed by Raytheon Vice-President Joseph Oppenheim, to sell ELSI's assets in an orderly liquidation. Raytheon's liquidation plan was frustrated without these assets. Raytheon's Italian lawyers advised us that because of the seizure of ELSI's assets by the Government of Italy without provision for ELSI's liabilities, there could be no sales proceeds with which to work. In the light of ELSI's resulting inability to pay its debts as they came due, ELSI would be obliged under Italian law to declare

bankruptcy. This recommendation was sound and I so advised Raytheon's management.

6. Attached at Exhibit A is a summary of Raytheon's legal expenses for counsel in Italy with respect to ELSI from 1968 to the present. These are expenses that would not have been incurred by Raytheon but for Italy's seizure of ELSI's assets and ELSI's consequent bankruptcy. Attached as Exhibit B is a summary of certain expenses incurred in the United States for counsel, printing and other expenses relating to this proceeding and the claim to which it relates.

7. Attached as Exhibit C is the total figure separated by: (1) expenses incurred in connection with the bankruptcy proceeding, (2) expenses incurred in defending against lawsuits brought by Italian banks against Raytheon seeking payment of loans to ELSI which Raytheon had not guaranteed, and (3) expenses incurred in pursuing Raytheon's claim for damages against the Government of Italy as a result of its actions with respect to ELSI. These amounts include, among other things, payments to Italian lawyers and payments for translation costs. They do not include other costs, such as the time and expense borne by Raytheon's in-house attorneys and employees. These summaries were prepared under my supervision based on actual billings received and paid by Raytheon, and I affirm that these costs were incurred in connection with the three categories specified above. The precise breakdown of costs by category was not provided to us on the original billings, but was estimated by me based on my knowledge of the work and costs involved, and is accurate to the best of my knowledge and belief.

(Signed) R. Joseph D'AVIGNON.

Commonwealth of Massachusetts
County of Middlesex.

Subscribed and sworn to before me. 19 January 1987.

(Signed) R. Joseph D'AVIGNON,
Notary Public.

Exhibit A

TOTAL OF PAYMENTS MADE TO VARIOUS OUTSIDE COUNSEL WITH RESPECT TO ELSI S.P.A.

(April 1968-December 1986)

	For Legal Services and Expenses Paid To								
Payee	*Bisconti*	*Calamia*	*Fazzalari*	*Roccella*	*La Pergola*	*Colletti*	*Cusimano*	*Ciccotti*	*Total*
Studio Legale Bisconti	$545,322.87	$ 8,636.67	$ 39,341.51	$ 992.82	$1,120.00	$	$	$	$595,413.87
Studio Legale Avv. Francesco Calamia		22,925.54							22,925.54
Studio del Avv. Prof. Elio Fazzalari			138,470.00						138,470.00
Studio Legale Avv. Fabio Roccella				51,524.68					51,524.68
Prof. Avv. Antonio La Pergola									
Prof. Dott. Nicolà Colletti						34,000.00			34,000.00
Prof. Giovanni Cusimano							15,000.00		15,000.00
Studio Legale Avv. Francesco Ciccotti								72,485.71	72,485.71
Total	$545,322.87	$31,562.21	$177,811.51	$52,517.50	$1,120.00	$34,000.00	$15,000.00	$72,485.71	$929,819.80

Notes re Studio Legale Bisconti:

Charges for services prior to April 1968 are not included in this report.

No billings have been received for any services subsequent to 1983.

Exhibit B

PAYMENTS MADE TO VARIOUS SOURCES IN THE UNITED STATES WITH RESPECT TO ELSI S.P.A.

(per details attached)

Paid To:	*Address*	*Invoice Date*	*Amount*
Baker and McKenzie	Chicago, IL	12/06/71	$2,551.70*
R. R. Baxter	Cambridge, MA	4/12/70	559.24
Warner Heinz	Billerica, MA	11/02/71	958.85
Warner Heinz	Billerica, MA	11/11/71	34.00
Warner Heinz	Billerica, MA	12/13/71	132.00
Addison C. Getchell and Sons, Inc.	Boston, MA	12/28/71	3,073.40
Addison C. Getchell and Sons, Inc.	Boston, MA	1/10/72	2,510.52
John J. Whelan		8/06/70	162.00
Total			$9,981.71

* ELSI portion of invoice.

Exhibit C

Expenses related to ELSI bankruptcy	$115,638.35
Expenses related to defense of suits by banks which had loaned money to ELSI	766,936.77
Expenses related to preparation of diplomatic claim and application to ICJ	57,226.38
	$939,801.50

Annex 41

ARTICLE 217 OF THE BANKRUPTCY LAW OF ITALY, ROYAL DECREE OF 16 MARCH 1942, NO. 267

[For Another English Translation see Counter-Memorial of Italy, Annex 21]

(Translation)

SECTION VI. PENALTIES

Article I

Violations Committed by Insolvent Businesses

217. Simple Bankruptcy. Punishable by six months' to two years' confinement if the owner/administrator, independent of the cases covered in the preceding article,

(1) has made expenditures for himself or his family which are excessive in relation to his economic status;

(2) has spent a considerable part of his assets in plainly or manifestly imprudent transactions;

(3) has carried out gravely imprudent transactions for the sake of delaying bankruptcy;

(4) has aggravated his own failure by not requesting a declaration of his own insolvency, or through other serious default;

(5) has not satisfied obligations assumed in a previous composition with creditors or bankruptcy.

The same penalty applies if, during three years preceding the bankruptcy declaration or, otherwise, since the inception of the enterprise whichever is less, the bankrupt enterprise has failed to keep books and other accounting records prescribed by the law or has kept these in an irregular or incomplete fashion (c. 2214 s.).

Apart from other additional penalties per Article III, Section II, Book I of the penal code, the sentence involves barring from the conduct of a commercial business and preclusion from leading positions in any enterprise for a period of up to two years.

* * *

(CHAPTER 2
CRIMES COMMITTED BY PERSONS OTHER THAN THE BANKRUPT)

Article 224. "Fatti di bancarotta semplice." The penalties provided for by Article 217 apply to directors, general managers, statutory auditors and liquidators of corporations which are declared bankrupt, who:

(1) have committed any one of the offenses provided for by the aforementioned Article;

……

Annex 42

MINUTES OF MEETING OF RAYTHEON-ELSI, S.P.A., BOARD OF DIRECTORS, 25 APRIL 1968

(Translation)

PROCEEDINGS: THE MEETING OF THE BOARD OF DIRECTORS HELD ON 25 APRIL 1968 IN ROME, VIA FERDINANDO DI SAVOIA 6, AT 14.30 HOURS, TO DISCUSS AND DECIDE ON THE FOLLOWING

AGENDA

1. The situation of the company subsequent to the seizure of the plant and recent developments. Pertinent decisions.
2. Convocation of a shareholders' assembly.
3. Various and sundry.

In Attendance:

for the Board of Directors:

Joseph Oppenheim	Chairman of the Board
Justin J. Guidi	Member of the Board
Ing. Aldo Profumo	Member of the Board

For the Audit Bureau: present:
Rag. Dario Fanfoni.

Absent was Dr. Giuseppe Abbadessa, Acting Auditor.
Present at the meeting was Stanley H. Hillyer.

In the chair was Joseph Oppenheim who, finding that the assembly had been duly summoned to the gathering by telegrams sent on 24 April 1968 to every member of the Board of Directors and of the Audit Bureau, and that all Board members were present, declared the meeting regularly called to discuss and decide the matters appearing on the Agenda.

The Chairman called upon Stanley H. Hillyer to act as secretary for the meeting. The Secretary read the Agenda.

Upon declaring the session open the Chairman informed the Board that Dr. Ugo Frediani, Chairman of the Audit Bureau, had resigned, effective as of 18 April 1968, and had been replaced, as stipulated in Article 2401 of the Civil Code, by Dr. Domenico Ramondelli. Dr. Ramondelli, duly summoned to today's meeting, has informed us by telegram, received today, that he will be unable to take part in the meeting and that he is resigning from his office of Auditor.

It will accordingly be necessary to ask the forthcoming shareholders' assembly to choose an acting auditor and/or a substitute auditor and a chairman for the Audit Bureau.

With respect to Point 1 on the agenda, the Chairman reviewed the company's situation in the aftermath of the plant sequestration order issued by the Mayor of Palermo. He informed the Board that an appeal had already been filed with the Prefect of Palermo seeking annulment of the decree.

The sequestration order, which the company considers altogether illegal and arbitrary, has served no purpose save that of further damaging the company's financial situation, denying it access to its assets and thereby impeding as well the sale of all or part of the same. In this connection, the Chairman notes that negotiations were already under way for the sale of the microwave and X-ray tube lines, which cannot be continued because of the sequestration order. The action itself is responsible for worsening the positions and expectations of the company's creditors.

Further, the Chairman informed the Board that last week, at the request of the President of the Sicilian Region, he had met twice with him to discuss possible sale of corporate assets to a new corporation to be created by the Sicilian Region. In actuality, the Region's proposal to set up a holding company is merely a stop-gap solution that would not in any way resolve the basic problem, which is to maintain ELSI as a vital and economically healthy component of the Sicilian economy. For this reason, it was not feasible to agree to the proposed solution.

After having made every possible effort to solve ELSI's problems, it is clear as of now that there is no possible or practicable chance of further developments. The company's financial situation has worsened and has not reached a state of insolvency. There are payments on long-term loans that fell due a few days ago, and other payments which the company cannot make as a result of lack of liquidity and of any chance of finding funding elsewhere. Sequestration of the plant has practically cancelled out any possibility of proceeding with an orderly liquidation of the company's assets that could provide us with immediate funds and give us the requisite breathing-space to negotiate and reach suitable arrangements with our creditors. In this state of insolvency, it is the Board's obligation under Italian law to report the situation to the Courts, and to file a petition in bankruptcy. The shareholders have been informed of the Board's intentions and, in view of the legal obligation incumbent on the Board in cases of corporate insolvency, have expressed their support for that decision.

The Chairman opened the discussion. Board member Profumo asked to make the following statement. He maintains that the language barrier and the disparate procedures have created a fundamental gap in understanding due to the lack of communications between the company and the governmental authorities and the state agencies involved. In this connection, he cites a meeting that took place on 23 April 1968 with Professor Gaffagna, who claimed that he spoke for Minister Pieraccini. According to what Professor Gaffagna had to say, Minister Pieraccini is of the opinion that the problem is due to a failure to understand and to incompatibility of their political and industrial views, each set of which may be perceived as sound, in and of itself. Reportedly, Minister Pieraccini would like to build a bridge between politics and industry, and plans to appoint a commission that would look into the claims of both parties and come up with possible solutions within a very short time. According to Profumo, there are three companies interested in acquiring ELSI's assets, and therefore argues that ELSI should be allowed to get what it is entitled to, in view of the strenuous efforts it has made and of the contributions it has made to date.

Chairman Oppenheim pointed out that the situation that has developed over the last several days has made it all too clear that the company is in a state of insolvency and hence the obligation arises for the Board to bring the situation to the attention of the courts. In such a situation it is not permissible for Board members to loll about doing nothing while they wait for a firm proposal promised them several months ago, but which has yet to materialize. The one firm proposal that has come to the company is that from President Carollo of the Sicilian

Region which, even so, for the reasons set forth earlier, is not an acceptable solution to the problem.

Meanwhile, the Board is still bound by its fundamental obligation to comply with the rules of Italian law. That does not alter the fact that should there be third-party interest in making firm and acceptable proposals, such proposals can still be taken into consideration within the limits of the substantial and procedural standards of Italian law.

Board member Guidi agrees with the Chairman's analysis. Profumo agrees as to the legal obligations incumbent on the Board in the situation of insolvency that has lately set in. Speaking for the Audit Board, Rag. Dario Fanfoni gave it as his opinion that the Board's duty, "now that the company's state of insolvency has been ascertained, is to proceed to do just that!" as the Chairman proposed.

The question was put to the vote. Thereupon the Board unanimously

DECIDED

recognizing the state of insolvency of the company, to ask the Palermo Court to declare the company bankrupt, and gives a mandate, jointly and severally, to Board Chairman Joseph Oppenheim, born in Boston, Mass., USA, on 23 November 1914, and to Managing Director Justin J. Guidi, born in New Alexandria, Pennsylvania, USA, on 16 November 1924, to prepare, present, and endorse the aforesaid request and any other document, act, or petition of any kind whatsoever that may be called for or suitable to that end, setting forth before the Court the circumstances leading up to this state of affairs, and, to that end, confers upon the aforementioned Joseph Oppenheim and Justin J. Guidi, jointly and severally, full powers of attorney, ordinary and extraordinary, exclusive of none, to the end that there may be no perception or question of inadequacy or insufficiency in the powers vested in them.

With reference to point 2 on the Agenda, the Chairman alluded to the advisability of convoking an ordinary and extraordinary meeting of the shareholders to decide upon the choice of Auditors and upon the company's state of insolvency. The Board unanimously

DECIDED

to convoke the general assembly of shareholders for 15 May 1968 at 11.00 hours for the initial convocation and for 22 May 1968 for the second convocation, at Via Ferdinando di Savoia 6, to discuss and decide upon the following Agenda:

Ordinary Session

1. Resignation of the Chairman of the Audit Board and election of auditors.
2. Various and Sundry.

and decided to authorize the Chairman to proceed with publication of the Notice of Convocation and other pertinent formalities.

With reference to point 3 on the Agenda the Chairman pointed out that the situation that has arisen as a consequence of the sequestration order, it is no longer feasible to proceed with the scheduled activities in light of the suspension of company activities subsequent to the cessation of company activities, given which the Board decided not to proceed with the dismissal of employees required to perform such activities. Accordingly, and with deep regret, it finds it necessary to proceed now with the dismissal of said employees. Upon completion of adequate discussion, the Board unanimously

DECIDED

with regret to proceed with the dismissal of all company employees, effective as of 30 April 1968, authorizing the Chairman and the Board members, jointly and severally, to send timely notification to employees engaged in plant security work, requesting them to continue their duties during the notification period.

Inasmuch as no other matter was put forward for discussion, the Chairman declared the session closed at 17.45 hours, pending printing, editing, and approval of the present proceedings, which is signed as follows:

(Signed)	*(Signed)*
The Secretary,	The Chairman,
Stanley H. HILLYER.	Joseph OPPENHEIM.

(A) Strike

1. "Dr. Ramondelli," and add
2. "in Rome."

Corrections Approved.

No. 36,400 of the Law Reports (2nd printing)

I, the undersigned Dr. Andrea Giuliani, Notary Public in Rome, member of the College of Notaries in Rome, do hereby certify that the excerpt in question is a true account of the original decision taken by the Board of Directors of Raytheon ELSI S.p.A., with home offices in Palermo as of 25 April 1968, entered on pages 110 to 124 of the proper corporate record book, duly stamped and witnessed in accordance with the law, and shown to me for collation purposes.

It is released in its original form at the request of the said company for legitimate use.

Rome, 25 April 1968. [*Signed:* signature illegible.]

Annex 43

RAYTHEON-ELSI, S.P.A., PETITION FOR BANKRUPTCY TO THE CIVIL AND CRIMINAL TRIBUNAL OF PALERMO DATED 26 APRIL 1968

(Translation)

CIVIL AND CRIMINAL TRIBUNAL OF PALERMO
REQUEST OF DECLARATION OF BANKRUPTCY

Raytheon-Elsi S.p.A. with offices in Palermo, Via Villagrazia 79, by its legal representative Mr. Justin J. Guidi, Managing Director (who acts in this deed by virtue of powers conferred upon him by resolution of the Board of Directors of 25 April 1968, attached hereto) in application of Articles 5, 6, and 14, of Royal Decree of 16 March 1942, being in a state of insolvency, requests this honorable Tribunal to declare its bankruptcy.

To this end it states as follows.

By deed of Notary Vito Di Giovanni of Palermo, of 18 March 1954, Elettronica Sicula (ELSI) was organized as a joint stock company, having as its object the production of electronic equipment. In 1956 said Company built in Palermo a plant for the production of said equipment, which started its activity in November 1956. The Company hired in Palermo about 100 employees and workers.

In 1959 Società Elettronica Italiana per Azioni (SELIT) was organized with offices in Palermo. Subsequently ELSI purchased all shares of SELIT. Raytheon Company, an American joint stock company, having its offices in Lexington, Massachusetts, USA, and La Centrale Finanziaria S.p.A. of Milan (and some of its affiliates) purchased the whole capital stock of ELSI which was allocated among them in varying ratios, initially 70 per cent and 30 per cent respectively; later, through the underwriting of subsequent issues of new shares, 40 per cent and 60 per cent respectively, and then 20 per cent and 80 per cent. The name of the Company was changed to Raytheon-ELSI S.p.A.; by deed of 30 March 1965, ELSI absorbed Selit in a merger. As a consequence and because of the relevant contributions of capital and advanced technology which was supplied by Raytheon Company the production activity of the plant became more and more important and about 1,000 workers were employed. In the meanwhile, the situation in the electronics market and the growing difficulties (in particular concerning some lines of production) created substantial problems, chiefly because Raytheon-ELSI is located in Sicily and must therefore bear costs and burdens higher than those of similar industries located in areas more advanced from the industrial point of view or nearer to the market. These higher costs and burdens have not been offset in practice (despite legislative provisions) by the payment of incentives due (i.e., 30 per cent of government supplies, reduction of transport costs, gratuitous contributions).

In order to give the Company a more solid financial basis Raytheon Company and Machlett Laboratories Inc., another US joint stock company, decided in March 1967, to purchase the share holdings of La Centrale and its affiliates investing a very substantial amount of money. Then they proceeded to reduce the capital stock of the Company from Lit. 4 billions to 1½ billions to account for losses and subsequently increased it to Lit. 4 billions. Raytheon Company bore further costs and otherwise substantially contributed to the business of ELSI by having ELSI execute orders which Raytheon Company could have executed directly. All this was done with the purpose and as an attempt to find a broader basis for a Sicilian industry, which would allow it to live and survive as a healthy and vital element of the regional and national economy.

In order to achieve such purpose, during the last year the management of the Company has made every possible effort, through contacts and negotiations with the Sicilian Regional Government, ESPI, IRI, Finmeccanica and other public agencies and private industries, in order to find an Italian partner which not only would furnish fresh capital but mainly would further the integration of the Company in the industrial, political and economic Italian situation, assuring it the actual benefit of the incentives for the industries in the Mezzogiorno Area above-mentioned and the possibility of obtaining new products and thus new and broader markets. Unfortunately these contacts and negotiations (which have been cultivated with determination and substantial expense of time by the management of the Company, not in their selfish interest but with the sole purpose of maintaining in Sicily an industry for the success of which the shareholders had made such relevant investments of capital and efforts of co-operation) despite several promises which had been made, up to this time, have not given any concrete and positive result.

The fiscal year ended 30 September 1966, showed a loss of Lit. 2,137,486,904. This loss was offset, as stated above, by a substantial investment of new capital on the part of the shareholders. The fiscal year ended 30 September 1967 showed a loss of Lit. 2,683,460,080, of which about Lit. 1,200,000,000 represented necessary devaluations and reserves and about Lit. 1,400,000,000 represented the operating loss. In spite of the fact that (thanks to the management of the business during the last fiscal year and thanks to the administrative assistance of the shareholder Raytheon Company, which were made possible by the greater freedom of management deriving from the substitution of the shareholder La Centrale S.p.A.) the operating losses were reduced by comparison with the previous fiscal year, the future perspectives of the Company were dim. During the first months of 1968 some events occurred which caused a rapid deterioration of the Company. The earthquakes caused disturbance to the production and negatively influenced the liquidity of the Company. Furthermore, intermitting strikes in the division of cathode ray tubes caused more adverse effects than the actual loss of working hours would suggest. It was necessary to close the cathode ray tube division in order to negotiate with the Unions conditions more in line with the industrial and commercial necessities. The notice given of the intent to reduce the number of workers by 175 — a necessary measure — caused a general strike in the plant starting 4 March 1968. All this gravely prejudiced the conditions of the Company. In this situation, in consideration of the notice by the shareholders that they could not contribute further capital in view of the enormous investment already made during so many years in Sicily and since it appeared impossible, in spite of many promises, to find an adequate Italian partner, the Board of Directors, on 16 March 1968, resolved to cease immediately all production activities and to cease all commercial activity and to dismiss all employees effective 29 March 1968. Such decisions were timely communicated to the regional and central Authorities. The Company was then preparing to organize an orderly transfer of all corporate assets and to such end it began to contact groups of creditors (banks and credit institutions).

On 1 April 1968 the Mayor of Palermo, alleging reasons of serious necessity and urgency, ordered the requisition of the plant and of the equipment of the Company. Such measure, which is considered by the Company illegal and arbitrary and moreover unfit to resolve the economic problem of the Company and of the Sicilian industry, has deprived the Company of the freedom to dispose of its asset for a long period, annihilating every possibility for the orderly disposition of the corporate assets; the negotiations then in course for the disposition of part or all the assets were prejudiced without recourse. Furthermore, in the last few days there were clear and express indications of a line of behavior intended to put the Company in even more serious difficulties.

Because of the order of requisition, against which the Company has timely filed an appeal, the Company has lost the control of the plant and cannot avail itself of an immediate source of liquid funds; in the meanwhile payments have become due (as for instance instalments of long-term loans; an instalment of Lit. 800,000,000 to Banca Nazionale del Lavoro became due on 18 April 1968, and the note therefore has been or shall be protested, etc.); it is acknowledged that it is impossible for the Company to pay such sums with the funds existing or available and such impossibility is due to the events of these last weeks. The Board of Directors has made all possible efforts for several months in order to find a solution to the fundamental problems of an economic, industrial and political nature of this Sicilian industry; now, in compliance with the duties of the Board of Directors arising from Italian law, the Board of Directors responsibly request that this honorable Tribunal declare the bankruptcy of the Company in order that the events of these last weeks (the origin and the duration of which are beyond the control of the Company) should not further prejudice the interests of the corporate creditors.

The following books and documents are attached to this request:

(A) Resolution of the Board of Directors of 25 April 1968.
(B) Statement signed by Mr. Giuseppe Polizzotto.
(C) Notes and comments concerning the books and documents attached hereto[1].
(D) Accounting records

  (1) Inventory book n. 3 (see notes 1, 2, and 3).
  (2) General ledger (see note 4) from page 2801 to page 3069.
  (3) Clients ledger (see note 5) from page 851 to page 1100, filled in up to page 1002.
  (4) Two suppliers ledgers (see note 6) from page 1001 to page 1250 and from page 1251 to page 1500 — filled up to page 1310.
  (5) Book of notes receivable.

(E) Balance sheet and profit and loss statement for fiscal years 1966 and 1967 (as of 30 September 1967).
(F) Attachments to the balance sheet as of 30 September 1967.
(G) Pro forma balance sheet as of 31 March 1968.
(H) Particular and estimate description of assets.
(I) List of creditors and indication of the respective credits.
(L) List of creditors which have a lien on assets of the Company and indication of the assets on which such liens fall.

As it is explained in detail in Exhibit (L) the strikes and in particular the order of requisition have hindered the filing of some of the exhibits in the manner requested and desired by the Board of Directors. The Board is at the disposal of this honorable Tribunal to furnish any clarification and any document available to it.

In view of the requisition of the plant the applicant Raytheon-ELSI S.p.A. elects its domicile for the purpose of this procedure in Rome, Via Bissolati, 76, care of Studio Legale Bisconti, and requests this honorable Tribunal that any communication directed to it or its legal representatives be addressed to the elected domicile.

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[1] See Counter-Memorial of Italy, Annex 32.

RAYTHEON-ELSI S.p.A.

(Signed) Justin J. Guidi,
Managing Director.

Annex 44

RAYTHEON-ELSI, S.P.A., JUDGMENT OF BANKRUPTCY, CIVIL AND CRIMINAL TRIBUNAL OF PALERMO, DECIDED 7 MAY 1968, DEPOSITED 16 MAY 1968, REGISTERED 27 MAY 1968

(Translation)

Decision n. 41/68
Chronological No. 1966
Repertory No. 2049
Art. 1294/-

REPUBLIC OF ITALY
IN THE NAME OF THE ITALIAN PEOPLE

The Tribunal of Palermo, third civil and bankruptcy division, formed by the following members:

(1) Dr. Claudio Terranova — President
(2) Dr. Salvatore Burgio — Judge
(3) Dr. Calogero Costanza — Judge

convened in the council chamber has issued the following

JUDGMENT OF BANKRUPTCY

against

RAYTHEON-ELSI S.p.A., with head office in Palermo.

Having read the petition by which the Managing Director of RAYTHEON-ELSI S.p.A. asked for the declaration of bankruptcy of the Company;
Having seen the documents exhibited and the attached balance sheet;
Having deemed Raytheon-ELSI S.p.A. to be in a clear situation of insolvency and that there are all the grounds for declaring it bankrupt;

For These Reasons

THE TRIBUNAL
Seen Articles 1, 5, 6, 16 of R.D. n.267 of 3 March 1942

declares

the bankruptcy of RAYTHEON-ELSI S.p.A., with head office in Palermo, 76 Via Villagrazia, represented by its legal representative

ORDERS

that the goods belonging to the bankrupt company, wherever they are, be sealed

APPOINTS

Dr. Vincenzo Badalamenti as Judge in Charge of the proceedings and Avv. Giuseppe Siracusa, with office in Palermo, Piazzale Ungheria, as Curator

ORDERS

to the legal representative of the bankrupt company to deposit within 24 hours the accounting books

GRANTS

to the creditors and to third parties who claim property rights on chattels possessed by the bankrupt company the term of 30 days from the date of this document is affixed to file their proof of claim with the Chancery

SETS

on 6 July 1968 at 9.00 a.m. the meeting of the creditors for the examination of their proofs of claim which will take place before the above-mentioned Judge in Charge of this bankruptcy Chancery

ORDERS

the "prenotazione a debito" for lack of funds.

Decided as above in Palermo, today, the 7th of May, 1968.

Signed by: Claudio TERRANOVA
Salvatore BURGIO
Cologero COSTANZA
G. SANTORO.

Deposited with the Chancery today, the 16th of May, 1968.

The Chief Clerk, signed by: G. SANTORO.
Art. 1294/-

Registered in Palermo on 27 May 1968, n.290 register mod. 71 M.E.
Debited Lire 6,200. Art. 125788 mod. 9.

The Director, signed by: ALOI.

This is a true copy of the original.

Palermo, 29 May 1970

The Clerk
(Signed) Illegible.

Annex 45

DOCUMENTS FILED IN THE CIVIL AND CRIMINAL TRIBUNAL OF PALERMO DESIGNATING GIUSEPPE SIRACUSA TRUSTEE IN BANKRUPTCY AND SELECTING THE CREDITORS' COMMITTEE IN THE BANKRUPTCY OF RAYTHEON-ELSI, S.P.A., DATED 4 JUNE 1968

[Not reproduced]

Annex 46

Address by Minister of Industry, Commerce, and Crafts Andreotti to the Italian Parliament, Dated 25 July 1968

[Extract]

The last item concerns an issue which has rightfully stirred public opinion in Palermo and the Sicilians in general, namely the long crisis of the Sicilian electronics firm Raytheon ELSI. It touched public opinion because, as was properly observed, in this case the crisis did not befall an old industry but one operating in a sector as new as that of electronics.

What caused this crisis? There may be also other reasons, and I should not make a pat speech on this factory. Essentially, the crisis originated in part as a negative consequence of very positive premises, that is, it was caused by the desire of hiring the workforce locally — not only unskilled workers but also those with degrees. This causes delays, the hiring of a larger number of workers and the risk of having to start all over again as workers who reach high levels of technical expertise are lured away by competing industries.

Moreover, the stock ownership followed a winding path; at first it was owned by a small group from Liguria, and then by the Centrale group which joined Raytheon with two different levels of participation. There were, also, some unfortunate developments. In order to amortize the initial expenses and the general expenses by producing high-quality material in large quantity, it was decided to manufacture television tubes, reaching agreements with the Thomas company. However, this company suspended the production of these tubes. In other words, a whole series of events explains the insufficient earnings of the company which, besides, started with a certain amount of indebtedness.

Last year, when there was the first sign of crisis, not only locally but also at the headquarters, contact was sought with Raytheon, and the company was asked to formulate a program to strengthen internally its operation. The program was formulated. It involved several aspects: First, a new infusion of capital in the amount of 6 billion lire from the Region; next a qualitative widening of production which was partly viable, partly difficult to implement and partly inadequately planned; finally, a commitment on the part of the State to place some specific orders with this now restructured company. Under this profile, an attempt was made to find a solution, which seemed legal then and still does, but it did not work. It consisted in assigning the quota for Southern Italy not only to the finished product but to the components as well. In that fashion we could have utilized the quota assigned to Southern Italy for specific electronic components manufactured in Palermo. Our jurists (that we deem above us) felt instead that the supply contract is a contract for finished products, and that the legally authorized appropriation can be used only for complete equipment and not for components. Therefore, under the circumstances, we were unable to give the Raytheon ELSI stock holders any guarantee.

I should add that we felt particularly perturbed (and not for petty political interests, but with the national interest in mind) by the absurdity of the structural and human deterioration of this resource that it took years to create. And furthermore, because part of this work, which involves Nato orders for equipment relating to a specific type of missiles, is made exclusively by this Palermo plant for

Nato countries, and it is of outstanding quality, according to the judgment of experts. It should be noted that the judgment on the quality of the plant comes from highly qualified and demanding sources and it has worked to the advantage of Raytheon ELSI.

The financial burden of the budget brought Raytheon ELSI to the difficult situation we all know. Through contacts made with the Region, and often also with Sicilian parliamentarians, some decisions have been made, which were difficult to reach, which allow us to look at the problem in a more satisfactory light.

The first decision was to direct IRI to create a plant for telecommunications equipment for the Siemens group, tied to IRI, as known. This was a formal decision. We have given IRI two months to work out the plans and to make the necessary preparations (finding a suitable site, etc). But those familiar with the situation in Palermo know that this is not difficult. This first decision has to do with Raytheon ELSI, not because it is intended as a replacement for Raytheon ELSI but because it will assist in the recovery program and, in my opinion, it will hopefully qualify Palermo as a center for electronics, and this may possibly contribute to further development. This is possible because the products involved have a considerable added value, as you know, so that the greater distance would not cause a significant price difference. With this in mind, and I am pleased to say it in this forum, we took into account the provisions in the extension law for the Fund for Southern Italy, relative to the agreements between the Minister of Transportation and the Fund for Southern Italy, according to which the effective cost of transportation to the user is a flat rate which allows him not to be at a disadvantage in relation to other destinations in the country. These agreements (as I am told by the Ministers' Committee for Southern Italy) have now been practically finalized and, therefore, will become effective relatively soon.

As far as Raytheon ELSI is directly concerned, two measures have been taken, one effective immediately and the other as a long-term measure. The first has been a small preliminary measure, assigning to the Region the burden of the compensation payments for an additional couple of months, with the establishment of a type of company which would permit a transition from a highly strained situation to a phase of normalization. And normalization, as we know, for an industry of this kind does not mean the *status quo*, but the possibility for further expansion in the qualitative sense and we hope in terms of employment.

This company, which should have the above-mentioned transitional function, is to be established by public institutions in co-operation with the Region and I can formally say, in the name of the Government, that this is not an intention but a fact. Therefore, the reopening of ELSI along this formula possibly will permit, through an out-of-court composition, the settlement of the current liabilities, and without these steps a recovery or a new start by ELSI alone would not be possible.

I would like to mention that actually Raytheon ELSI not only manufactured products under the Raytheon group license, but managed to adapt many of these products to the European market with procedures and techniques absolutely original. Which proves the remarkable importance of this plant established in the middle of Sicily. I may add that the Minister of Industry and the Government in general will watch this development so that it may be completed in the shortest possible time, but I believe, as I said yesterday to the delegates in answer to their questions, that we may consider this issue, which caused a lot of distress even outside our country, positively solved. Nato, for instance, was very concerned that these products contracted out exclusively to Raytheon ELSI in Palermo would become unavailable.

Annex 47

PRESS RELEASE BY THE GOVERNMENT OF ITALY, DATED 13 NOVEMBER 1968

[See also p. 249, supra*]*

(Translation)

PRESS RELEASE — 13 NOVEMBER 1968

Minister Restivo, Minister Bo, Undersecretary Caron, the Hon. Carollo, President of the Sicilian Region, Dr. Carli, Governor of the Bank of Italy, Dr. Ruffolo, Secretary-General for Economic Planning, Dr. Nuvoloni, Director-General of the Treasury, and Dr. Medugno, General Manager of IRI, met with Minister Colombo as Chairman to examine the situation resulting from the bankruptcy of Raytheon El.Si. and the possibility of resuming operations at the plant also for the purpose of reducing unemployment.

While the STET Group remains committed to build a new plant in Palermo for the production of telecommunication products, the IRI-STET Group, urged by the Government, after the examination of alternative solutions which proved unfeasible, stated its willingness to intervene in the take-over of the plant and in the organization of new lines of production.

The IRI-STET Group, in assuming this positive attitude, took into consideration the commitments made by it in the recent conventions regarding the most important telecommunications services, in a sector where technological progress is very rapid and where the problems of technological research must be faced with adequate means, applied to telecommunications and especially to commutation centers.

Parliament has recently enacted new provisions concerning the promotion of applied research in the fundamental sectors of industry. Acting under such new provisions STET will be able to play a very relevant role in promoting technical progress in the field of telephone commutation. In consideration of these premises the STET Group agreed to intervene in the taking over of the plant of the bankrupt Raytheon El.Si. of Palermo.

The conditions and means of such take-over will have to be agreed by the STET-Group in concurrence with the Government of Sicily.

Annex 48

PHOTOGRAPH OF ENTRANCE TO ELETTRONICA SICULA, S.P.A., PLANT IN PALERMO, SICILY, 1962

[Not reproduced]

Annex 49

PHOTOGRAPH OF ENTRANCE TO RAYTHEON-ELSI PLANT IN PALERMO, SICILY, NOVEMBER 1968

[Not reproduced]

Annex 50

"IRI BREAKS ITS PROMISE — 200 WORKERS REMAIN JOBLESS", *L'ORA*, 5/6 DECEMBER 1968

[Not reproduced]

Annex 51

NOTICE OF AUCTION TO BE HELD 18 JANUARY 1969, *CORRIERE DELLA SERA*, 11 DECEMBER 1968

(Translation)

DEPARTMENT OF STATE, DIVISION OF LANGUAGE SERVICES

LSNO. 121099
BL/AO
Italian.

From *Corriere della Sera*, page 15, Wednesday, 11 December 1968.

The Tribunal of Palermo,
Bankruptcy Division.

It is herewith made known that on 18 January 1969, at 11.00 a.m., an auction sale will be held in Palermo before the judge in charge of the bankruptcy proceedings of the Raytheon EL.SI. S.p.A. for the purpose of auctioning off the Raytheon EL.SI. S.p.A. electronics plant located on a plot measuring 48,103 square meters accessible from Via Villagrazia 79 and consisting of buildings, installations, machines, various equipment, and furnishings for the production of cathode ray tubes, microwave tubes, X-ray tubes, dischargers, semiconductors, and complex components.

Base price: L.4,560,588,440 [translator's note: These figures were extremely hard to read and may be wrong, please check out].

Those intending to participate in the auction must deposit with the Court Clerk's Office L.365,000,000 as security as well as L.847,271,000 for foreseeable expenses, in the form of a legal bond, by 17 January 1969, 1.00 o'clock p.m.

Bids must exceed L.5,000,000.

Costs and taxes are borne by the highest bidder.

Remittance of price to be made within 30 days from award.

Further information available from the trustee in bankruptcy, Attorney Giuseppe Siracusa, Piazzale Ungheria 84 (translator's note: this number could also read 34 — the original is almost illegible), Palermo, Tel. 217.480 or from the Court Clerk's Office at the Tribunal of Palermo, Bankruptcy Division.

THE COURT CLERK.

Annex 52

MINUTES OF 18 JANUARY 1969 AUCTION OF ELSI'S ASSETS

(Translation)

DEPARTMENT OF STATE, DIVISION OF LANGUAGE SERVICES

LSNO. 121049
BL
Italian.

Judicial Files,
Tribunal of Palermo, No. 128,
N. 41/68,
Cron. 126.

Tribunal of Palermo — Bankruptcy Division

Record of failed auction sale of the property of the bankrupt Raytheon EL.S. S.p.a.

On 18 January 1969, attorney Giuseppe Siracusa, Raytheon EL.S. S.p.a.'s trustee in bankruptcy, appeared before Judge Vincenzo Badalamenti in the presence of the undersigned court clerk in Palermo.

It is noted that all the formalities have been observed in pursuance of the order to sell, and that no bids have been received for the auction scheduled for today.

The Judge therefore declares the auction failed.

Judge's signature.

Court Clerk's (illegible) signature.

Annex 53

"CGIL : THE UNDERTAKINGS FOR ELSI ARE NOT BEING FULFILLED", *GIORNALE DI SICILIA*, 8 DECEMBER 1968, PAGE 6

[Not reproduced]

Annex 54

"ELSI : AGREEMENT REACHED FOR WORKERS", *GIORNALE DI SICILIA*, 30 JANUARY 1969, PAGE 2

[Not reproduced]

Annex 55

"THE 'EX' [EMPLOYEES] OF ELSI PROTEST IN ROME", *GIORNALE DI SICILIA*, 30 JANUARY 1969, PAGE 5

[Not reproduced]

Annex 56

"ELSI : CONCLUSIVE MEETING IN THE PREFECTURE", *GIORNALE DI SICILIA*, 19 MARCH 1969, PAGE 14

[Not reproduced]

Annex 57

NOTICE OF AUCTION TO BE HELD 22 MARCH 1969, *THE NEW YORK TIMES*, 5 MARCH 1969, PAGE 28

THE NEW YORK TIMES, 5 MARCH 1969, P. 28

TRIBUNALE DI PALERMO — SEZIONE FALLIMENTARE

(TRIBUNAL OF PALERMO — BANKRUPTCY DIVISION)

It is made known that on 22 March 1969, at 10 a.m. in Palermo the judge in charge of the Raytheon-ELSI S.p.A. bankruptcy will proceed with the sale by auction of the Raytheon-ELSI S.p.A. electronic complex standing on 48,103 square meters of land, with access from 79 Via Villagrazia, Palermo, Italy, and composed of buildings, facilities, machinery, miscellaneous equipment and furnishings for the manufacture of cathode ray tubes, microwave tubes, X-ray tubes, surge arresters, semiconductors and complex components, as well as with the contemporaneous and unseparable sale of the entire inventory as described in the inventory statements and existing in the warehouses at the plant, in Milano and in Rome, in the "Magazzini Generali" and customs warehouses in Palermo. Excluded from the sale are only some movable goods indicated in the Court Provision of 2/26/69.

Upset price for the plant and inventory is Lire 6,223,293,258 of which Lire 4,000,000,000 (four billion) are for the plant and equipment and Lire 2,223,293,258 for the inventory.

Prospective bidders must post with the "Cancelleria Del Tribunale" (Court Office), a Lire 520,000,000 bond and Lire 780,000,000 for foreseeable expenses in the forms prescribed for judicial deposits within 1 p.m. of 21 March 1969.

Biddings above the upset price must not be less than lire 6,000,000.

Expenses and taxes are at the awardee's charge: payment of price to be made within 30 days from the adjudication date.

For additional information apply to the bankruptcy curator, Mr. Giuseppe Siracusa, attorney at law, 84 Piazzale Ungheria, Palermo, Italy, Telephone 217480, or to the "Cancelleria Del Tribunale, Sezione Fallimentare (Court Office, Bankruptcy Division), Palermo, Italy.

The Master,
(Dr. Alberto ANANIA).

Annex 58

MINUTES OF 22 MARCH 1969 AUCTION OF ELSI'S ASSETS

(Translation)

JUDICIAL FILES

TRIBUNAL OF PALERMO — BANKRUPTCY DIVISION

Record of failed auction sale of the property and movable assets of the bankrupt Raytheon EL.SI S.p.a.

On 22 March 1969, Attorney Giuseppe Siracusa, the trustee in bankruptcy of Raytheon EL.SI S.p.a., appeared before Judge Vincenzo Badalamenti in the presence of the undersigned court clerk in Palermo.

It is noted that all formalities have been observed pursuant to the order to sell, and that no bids have been received for the auction scheduled for today.

The Judge therefore declares the auction failed.

Judge's signature.

Court Clerk's signature.

Annex 59

"'THERE WAS AN AGREEMENT' SAYS CAROLLO", *GIORNALE DI SICILIA*, 6 APRIL 1969

[See also Unnumbered Documents Submitted with the Counter-Memorial of Italy, Vol. II, Exhibit No. III-22A]

(Translation)

PALERMO — SUNDAY, 6 APRIL 1969, *GIORNALE DI SICILIA*, ELSI "THERE WAS AN AGREEMENT" SAYS CAROLLO — BY ETTORE SERIO

It should have been merely a demonstration of solidarity with the employees of ELSI, for 428 days engaged in a desperate struggle to save their factory from closing. The intervention of several regional delegates, and especially of the former President of the Region, Carollo, transformed it instead into a real and true political debate which will have, almost certainly, repercussions at the Sala d'Ercole.

Last night the Politeama Theater was filled almost to the boxes. For the "Easter for the ELSI workers" all the women's movements and the workers of other Palermo factories had given their support. The interior of the theater had been festooned with a long series of slogans. "We are wrong" — said one — "to hope in those who do not know — nor wish — to solve our problem." And another: "We want to be free from need. Give us work to make us feel free."

Phrases of this type give an idea of the tone of the interventions of the various speakers (labor representatives, exponents of the women's movement, politicians) who followed one another to the microphone. But the most important intervention came from the Honorable Vincenzo Carollo, who was seated in one of the last rows and had been loudly called to express his thoughts. Rather, more precisely — as Colombo, one of the secretaries of the Labor Union Council clearly told him — to "confirm" several of the declarations he made when he was President of the Region, which afterwards were disclaimed by the parties concerned with solving the ELSI problem. Colombo was referring to the news from last October when Corollo and competent ministers of the national Government had given for reached the agreement by which IRI would take over the Guadagna factory.

Last night Carollo confirmed the news, adding a clamorous element to the polemics of these days. He said: "There is an agreement: precise, written, and signed. It involved the takeover of ELSI by IRI with the same financial terms that were considered when the formation of a mixed company — IRI-IMI-Region was contemplated.

The agreement, as Carollo explained it last night, entailed the acquisition of the factory by IRI for the sum of four billion lire. It was even agreed that IRI would be absent from the first auction, participating instead in the second one, where the basic price was precisely four billion lire. With regard to the inventory it was, instead, decided that it would be sold in successive stages. The proceeds would go to the creditors, less 30 per cent to cover administrative fees. "What I am saying is so true —" continued Carollo, "that immediately after this conversation the directors of IRI came to Palermo in order to form ELTEL. They even managed to walk into the factory, convincing the workers to manufacture the 'oscillators' commissioned by Nato".

Carollo then added, and this is another very important element, that the consortium of creditors declared itself satisfied with the terms of the agreement. Even the bankruptcy trustee gave his assent "without captious objections". "What happened between then and today," concluded the former President of the Region, "I do not know nor have I been informed." And from this final comment transpired a polemic tone towards the present regional Government.

Two things are remarkable in Carollo's remarks:

(1) In October the agreement would have been reached even on the purchase price;

(2) The consortium of creditors and the bankruptcy trustee would have been satisfied.

The truth, instead, is that IRI (through ELTEL) has continued to speculate on a lower purchase price, no longer honoring its previous commitment; and it also happened that the consortium of creditors and the bankruptcy trustee backed out as well, bringing up the problem of the inventory to be acquired together with the plant. So that the next auction, scheduled for 3 May, has a basic price of five billion lire, notwithstanding that the price of the plant alone has fallen to 3 billion and 200 million lire (the inventory is valued at 1 billion and 800 million lire).

Many obviously reneged on their obligations, and this was already known. But Carollo's statement, where a written agreement was mentioned, shifted the debate to a purely political plane.

The Honorable La Torre, who spoke immediately afterwards, said that "after the news given by Carollo, we must immediately bring this explanation to the attention of the Regional Assembly. The Communist Party will propose a new debate and the appointment of a parliamentary committee which will go to Rome and deal with the whole matter."

Feliciano Rossitto, regional secretary of CGIL, talked of "maneuvers by Raytheon and IRI to tire the workers of ELSI. We need clarity", he continued. "The Regional Assembly must clear up what happened in October and what changed afterwards."

Rossitto, then, dealt with the fundamental issues of the problem. He stated that the battle for ELSI is, in reality, the battle for the industrialization of Sicily, for the economic rebirth of the island, and he admitted that even the unions have to carry out a new strategy involving "the confederations at a national level".

What is the most important proposal to come forth from last night's meeting? To obtain, in fact, that the workers of Milan fight for the problems of their Sicilian counterparts is one of the aspirations, almost mythic, of all Southern workers. Will the CGIL succeed in realizing this kind of miracle?

Last night's meeting, characterized by Carollo's statements, has not lost, however, its original spirit, which was to demonstrate the solidarity of the whole city to the employees of ELSI. There have been interventions by the Honorable Rosario Nicoletti, who placed the problem of the electronics industry into the wider context of the Palermo economy, by labor representatives Bellomo, Riccobono, Garofalo, Viola and by Miss Franca Castiglia, who brought the support of the women's movements of Palermo.

The sum collected for the "Easter for the ELSI workers" amounts to approximately 3½ million lire. It will be used to form a "resistance fund". From this fund the workers will draw the amount necessary for a coming trip to Rome; the purpose: a new protest against IRI.

Annex 60

MINUTES OF RAYTHEON-ELSI, S.P.A., CREDITORS' COMMITTEE MEETING, 29 MARCH 1969

[See also Unnumbered Documents Submitted with the Counter-Memorial of Italy, Vol. II, Exhibit No. III-24]

(Translation)

MINUTES OF THE MEETING OF THE CREDITORS' COMMITTEE

The Creditors' Committee met on 29 March 1969, at the Raytheon ELSI facility located at 79 via Villagrazia in Palermo. Present were:

Dr. Bruno Lipari, Director, BNL, Palermo,
Dr. Eng. Silvio Laurin, member,
Mr. Giovan Battista Riccobono, member,
Mr. Antonio Miserendino, member,
Attorney Giuseppe Bisconti, member.

Also present was the trustee, Attorney Giuseppe Siracusa.

The trustee informed the Committee of the results of the negotiations with representatives of ELTEL regarding the leasing of the facility, and he summarized the essential facts:

Lease: 150,000,000 Italian Lire. Term: 18 months, with early and immediate termination in the event of a court-ordered sale. Normal and start-up maintenance to be charged to the lessee. Possibility of installing new equipment for new types of operations, and restoration of the facility to the initial condition prevailing at the start of the lease.

The trustee also reported that a third attempt to auction off the property would have to be made, and he asked for an opinion regarding the sale of the stocks at a reduced price.

The Creditors' Committee could not reach unanimity regarding the first item. Attorney Bisconti objected to the lease because its sole effect would be to favor one individual party and to make it essentially impossible to sell the facility to any third party other than ELTEL; because the amount of the lease is considerably less than the depreciation caused by the wear and tear on the equipment; and because, despite all precautions by the trustee, the lease would of necessity give ELTEL access to the business secrets of the Raytheon company for the violation of which the Raytheon company could even hold the trustee liable. He felt that under these circumstances a decision by the bankruptcy administrators to grant a lease to ELTEL would constitute a departure from their own institutional objective which is to safeguard the interest of the creditors and not to favor any particular party. The other four members were in favor of leasing the facility for a period of six months to one year, at the maximum, on the condition that ELTEL acquire at the same time the inventoried stocks for an amount of at least 1.8 billion Italian Lire. They were also willing to reduce the corresponding lease price, even though the agreed amount would not appear to conform to sound financial management.

Regarding the second item, Attorney Bisconti advised against reducing the price of the stocks, based on the inventory report, arguing that the price is already extremely low. He pointed out that the best way to achieve a profitable sale is the one originally planned for the liquidation of Raytheon EL.SI., that is, selling each production line separately together with the related stocks.

The other four members were in favor of selling the stocks at a reduced price, not lower than 1.8 billion Italian Lire, in one single lot at the same time as the sale of facility.

Such a sale in one single lot was opposed by Mr. Riccobono.

Read, approved and signed: B. Lipari,
Giuseppe Bisconti,
Antonio Miserendino,
Riccobono, Giovan Battista,
Silvio Laurin,
Giuseppe Siracusa, trustee.

This is a true copy of the original:

The Clerk
(Signature illegible)

Palermo, 5 June 1970.

Annex 61

SUBMISSION BY TRUSTEE IN BANKRUPTCY GIUSEPPE SIRACUSA TO THE CIVIL AND CRIMINAL COURT OF PALERMO, DATED 3 APRIL 1969

(Translation)

THE HON. JUDGE IN THE BANKRUPTCY CASE OF RAYTHEON ELSI S.P.A. AT THE COURT OF PALERMO

The undersigned attorney Giuseppe Siracusa, liquidator/receiver in the above bankruptcy case, hereby submits and requests the following:

The undersigned has been negotiating with the representatives of ELTEL S.p.A. relative to the possibility of leasing the Raytheon ELSI facility. The negotiations were interrupted when ELTEL tried for a lease of the facility for a fixed period of two years, without any provision for earlier termination in the case of a court-arranged sale of the property, in view of the Court's objection to a possible lease which would preclude earlier termination of the contract in the case of a judiciary sale.

Several days later, the undersigned was invited to participate in a meeting in Rome for resuming the interrupted negotiations now that ELTEL was prepared to accept a prior-termination clause as part of a lease agreement. The meeting took place on 25 March 1969 on which occasion ELTEL presented the draft of a proposed lease agreement which the undersigned, without comment or discussion, reserved the right to examine for referral to the cognizant agencies. The draft reads as follows:

> "1. The liquidator of ELSI S.p.A. leases to ELTEL S.p.A. the industrial facility owned by the bankrupt company at Palermo-Guadagna as described in more detail in the attached tabulation.
>
> 2. The contract will be valid for a period of 18 months beginning on . . . 1969. However, it is specifically agreed that this contract can be terminated at an earlier date whenever the leased facility is sold by liquidation of the bankruptcy assets, through legal adjudication provided that the buyer submits an appropriate request in writing.
>
> 3. The rental fee is set at L.12,500,000 per month, payable to the lessor at his domicile by the fifth day of each month.
>
> 4. On expiration of the agreement, the facility will be turned back over in the condition it was leased to the tenant per detailed enumeration, except with allowance made for fair wear and tear of the items concerned.
>
> 5 The tenant/lessee assumes the cost of ordinary maintenance and any expenditures it deems necessary for operating the plant.
>
> 6. The lessee may perform, at its own expense, such modifications and conversions as it deems desirable for a more efficient production operation within the leased facility. To the extent that such modifications and conversions would substantially change the present structure of the facility proper, the lessee must obtain the lessor's approval, without change or prejudice to the obligation stipulated in the preceding clause.

> 7. All and any products brought into the rented facility by the lessee, even if they are integrated into the facility, remain the lessee's exclusive property.
>
> 8. The cost of this agreement including registration fee will be defrayed by the lessee.
>
> 9. Any controversy relative to the interpretation or execution of this contract will be resolved in definitive fashion by formal arbitration through a committee of arbiters of which one each is nominated by the parties to this agreement while the third arbiter is selected by agreement between the first two or, failing that, by the president of the Court of Palermo. Place of arbitration is Palermo for which purpose the parties hereto choose the domicile specified in the above heading."

The undersigned has asked for the opinion of the creditors' committee regarding a possible lease agreement on the facility. In their meeting of 29 March 1969, the committee voted, by majority, in favor of it under the condition that the lessee purchase at the same time all the (unfinished) goods in process at the price of L.1,800,000,000. Last night at 8.30, ELTEL sent the following telegram:

> "Reference negotiations pending at Palermo and Rome — We formally confirm, in regards to your declarations and request of today, our willingness to proceed immediately with drawing up of lease agreement according to contract draft submitted to you and discussion with you during meeting Rome, 25 March 69, draft which acknowledges request previously formulated by the Judge and yourself. We also confirm that Societa Italiana Telecomunicazioni Siemens is prepared for any possible guarantees in honoring our contractual obligations. Regards, Ing. Rovalido, Vice-President ELTEL."

Palermo, 3 April 1969, the liquidator. (s) Attorney Giuseppe Siracusa.

THE JUDGE,

having read the above request; having considered that the third attempted auction sale of the facility is scheduled for 3 May 1969; having also considered that the liquidator has been negotiating for the possible lease of the facility and has meanwhile received from foreign companies requests for information regarding the possible acquisition of given production lines with the appropriate supplies; having further taken into account that the creditors' committee, providently advised of the possible lease of the factory, has expressed essentially negative opinion on the subject; and having consequently concluded that a decision regarding the lease and the clauses involved would be of a particular delicate nature,

THEREFORE

invites the liquidator to express his opinion, indicating the reasons for the same, relative to ELTEL's request, also keeping in mind the following:

1. Time required for turning the facility over to the lessee and, most of all, for the restitution of the plant to the liquidator in the case of its sale (in consideration of the short time in which the facility must be made available to a possible buyer);
2. Acceptability of the clause according to which ELTEL would be permitted to make modifications and changes for more efficient production;
3. Possible complications with the clause relating to premature termination of the lease contract also in the hypothetic sale of a single production line of the facility;

4. Adequacy, or inadequacy, of the rental fee offered;
5. Acceptability of the proposed duration of the lease;
6. Possible imposition of penalties for delays on the lessee's part in meeting its obligation to reconsign the facility in the case of premature contract termination or upon expiration of the lease.

The liquidator is asked to draw up a contract format, if necessary, in view of the vagueness and incompleteness of the draft transcribed in the request.

Palermo, 3 April 1969.

The liquidator,
(Signed) Giuseppe SIRACUSA.

Annex 62

BRIEF TO CIVIL AND CRIMINAL TRIBUNAL OF PALERMO FROM AVV. GIUSEPPE BISCONTI, DATED 8 APRIL 1969

[See also Unnumbered Documents Submitted with the Counter-Memorial of Italy, Vol. II, Exhibit No. III-25]

(Translation)

TRANSLATION OF BRIEF TO THE JUDGE IN PALERMO CIVIL AND CRIMINAL TRIBUNAL OF PALERMO

To the Honorable Judge in Charge (Giudice Delegato) of the Bankruptcy of Raytheon-ELSI S.p.A.

Your Honor,

As you know, at the meeting of 29 March 1969, the Creditors' Committee in the bankruptcy of Raytheon-ELSI S.p.A. was called upon to express its opinion in relation to the proposed lease of ELSI's plant and pertinent equipment to ELTEL S.p.A., an affiliate of Siemens (IRI Group).

The reasons underlying my unfavorable opinion are expressed in the minutes of said meeting in a summary way, as required by the need of concise minutes. I believe it is my duty to clarify hereby in greater detail the reasons for my dissent. For such purpose, it is necessary to outline in a summary way the development of events of the last months relating to the ELSI case.

In the course of the summer of 1968, various negotiations took place with the participation of the liquidator, Attorney Giuseppe Siracusa, Senator Caron in representation of the Italian Government, representatives of private companies interested in taking over, in one form or another, the ELSI plant, and representatives of IRI, IMI and ESPI.

Said negotiations, in spite of the difficulties encountered, seemed to be a prelude to a global solution to the problem of ELSI, which would take into account the serious social problem represented by the unemployment of approximately a thousand persons and, at the same time, protect the interest of the creditors. Said negotiations, and in particular the negotiations with a French group, were abruptly discontinued by the Italian Government after a meeting which took place in Rome on 13 November 1968, followed by a press release (issued by the Italian Government), photocopy of which I am attaching hereto, indicating the decision of the Italian Government to cause IRI-STET to intervene in order to take over the ELSI plant.

Said decision was received as a triumph by the Sicilian political environment, it was greeted benevolently by the workers of ELSI to such an extent that the Raytheon-ELSI name was taken off the façade of the plant and replaced with the words IRI-STET which until today, as far as I know, are still on the façade of the plant at Guadagna (location of the ELSI plant in Palermo).

STET, which had been designated by the Italian Government for such operation, has formed together with Siemens (a subsidiary of STET) an affiliate in

Palermo under the name of ELTEL S.p.A. The purpose of ELTEL S.p.A. was that of participating in the auction for the purchase of the ELSI plant and its inventory.

In order to facilitate this transaction and, above all, taking into account the time necessary for the completion of the auction sale and the following formalities, the Creditors' Committee expressed a favorable opinion, at its meeting of 3 December 1968, in relation to the temporary operation of the magnetrons line also in order to enable ELTEL, or Siemens instead, to participate in the supply of magnetrons to Nato, thus retaining for ELSI a customer of absolutely primary importance. From the standpoint of the creditors, the temporary operation of the line appeared beneficial in so far as it would have kept high the value of the plant retaining a customer of such importance. The express condition for the temporary operation was the purchase of the plant by ELTEL. Raytheon Company, owner of the proprietary rights necessary for the manufacture of said magnetrons, maintained a benevolent attitude with the view of favoring a total solution of the ELTEL problem.

All this notwithstanding, at least until the date of the last meeting of the Creditors' Committee and, judging from the Sicilian press until today, there has been no declaration nor any proposal coming from ELTEL or the IRI group addressed to the bankruptcy officials, relating to the purchase of the plant.

The *Giornale di Sicilia* of 6 April 1969 reports a statement issued by the Honorable Carollo (past President of the Regional Government of Sicily) to the effect that last fall IRI had agreed in writing to purchase the plant (without inventory) for 4 billion lire.

IRI, notwithstanding the alleged commitments, has let two auctions go unattended for the obvious purpose of causing in such way the price to become lower. The attitude of IRI leads one to suspect that this maneuver shall continue for several months until such time as the price of the plant, because of the reductions that the law permits (but does not require), will go down to such a low value that the solution of the serious social problem represented by the 1,000 ELSI workers may also convert itself into an enormous bargain for IRI and into an enormous damage to ELSI creditors. The aforementioned decision of the Italian Government, which was communicated to the press through the attached press release of 13 November 1968, has in fact made it impossible for private groups to participate in the auctions for the purchase of the ELSI plant (and the fact that interested private parties are mentioning that the provisions of the bankruptcy laws are fully respected because anybody has the right to participate in the auctions, has the taste of a bitter mockery in a country like Italy, the fatherland of law).

In consideration of the decision of the Italian Government to take over the ELSI plant through a group controlled by it and of the attitude taken by the labor unions and of the occupation of the plant by the workers and in consideration of all the actions carried out by the workers so that IRI would take over the plant in preference to any other group, it would be naive to think that any responsible private group may decide to bid at an auction. It must be noted, in this respect, that the international press has given emphasis to the press release of the Italian Government of 13 November 1968, to such an extent that some journals, including also the monthly *Journal of the American Chamber of Commerce for Italy*, had already announced the solution of the ELSI problem through the completed take over of the plant by IRI.

All this notwithstanding, until today ELTEL has not made any offer of purchase. Today it requests a lease for a period of apparently 18 months, without making any commitment as to its purchase at any price.

It is impossible to see what benefit may accrue to the creditors from the lease. On the contrary, it appears that the lease can only cause damage to the creditors because ELTEL, once it has obtained possession of the plant — notwithstanding the provision that may be included in the lease agreement that in the event of purchase of the plant or part thereof by third parties the same shall be terminated — shall have presumably no interest in purchasing the plant or, in any case, it shall have no urgency to purchase it and a consequence of all this shall be that, through successive auctions, the price shall be reduced to such point as to depreciate completely the ELSI plant. On the other hand, a private group which might still think of purchasing the plant or part thereof, knowing of the aforementioned decision of the Italian Government and knowing that IRI is also in the possession of the plant, can only be absolutely discouraged even from taking into consideration such a possibility.

I must add also that the lease of the plant shall make it impossible (for the liquidator) to sell the inventory at any reasonable price. In accordance with a communication made by the liquidator, Attorney Giuseppe Siracusa, at the latest meeting of the Creditors' Committee, ELTEL is said to have offered to buy part of the inventory at a price of approximately Lire 600 million.

In relation thereto, one cannot avoid observing the following:

(a) the price offered by ELTEL is extremely low, especially if related to the value of the inventory determined by the appraiser appointed by the Tribunal, which was itself considered extremely low by experts in the marketing of electronics products;

(b) the inventory can be sold at a reasonable price only to whomever uses the plant; therefore, if the inventory is separated from the plant and if an attempt is made to sell the inventory separately, the only result shall be that the inventory will be sold as scrap or that it may be absolutely impossible to sell a substantial part thereof;

(c) in the aforementioned situation, ELTEL shall be in a position to impose the conditions under which it may buy the inventory for its own use.

This aspect of the problem was finally seen also by the other members of the Creditors' Committee, who did want to attach a condition to their favorable opinion on the proposed lease, namely that ELTEL must purchase all the inventory even if at a further reduced price of Lire 1,800,000,000.

In the light of the above events, which are known to everybody in addition to having been fully reported by the press, it is obvious that the proposed lease would have the only effect of favoring a third party, that is to say ELTEL, in acquiring the plant at an extremely low price or even in enabling ELTEL to avoid the political and social problem in which it was enmeshed by the Government's decision of 13 November 1968, without purchasing the plant. Indeed, and please your Honor, pardon me for being too suspicious, in consideration of the decision announced by the IRI-STET group to build a plant for telephone equipment in Palermo, one cannot see why IRI could not in a year-and-a-half or two approximately, namely, when the telephone equipment plant presumably shall be in existence, merely transfer the workers from the ELSI plant to the new plant. For the aforementioned reasons, in fact, if ELTEL will not make an offer to acquire the ELSI plant, nobody else shall participate in the auctions; hence, the lease will most likely be extended and certainly this is what the politicians and the unions would request.

I have explained all these reasons in the course of the meeting of the Creditors' Committee of 29 March 1969. Whereas I obtained the consensus of all the other members, in so far as the analysis of the situation and of the events that have determined such situation are concerned, and whereas there has been at all the meetings of the Creditors' Committee a unanimous consensus in criticizing and condemning the action of the Italian Government and the attempts of the IRI group to impose a solution which lowers the value of the ELSI plant beyond measure, the formal decision has been that which results from the minutes of the meeting of 29 March 1969. I do not presume hereby to subtract myself from the majority rule, since I remained a clear minority in the Creditors' Committee. The reason which forces me to clarify my position is that I respectfully believe that the Creditors' Committee, as an official organ of the bankruptcy proceedings, expressing a favorable opinion on the lease is abdicating its own function, which is that of protecting the interest of all the creditors (and not only of the creditors who are directly represented in the Committee) and not that of favoring a private party even if for valid social reasons. It is in this respect that I have spoken of a deviation from the institutional purposes of bankruptcy proceedings.

The Sicilian and the national press have amply documented the occurrence of meetings, of negotiations, of verbal and written agreements, etc., relating to the future of the ELSI assets to such an extent as to justify the doubt as to whether the interested parties think that the official organs of the bankruptcy proceedings are those established by law or instead thereof the meetings of national and regional political authorities, union leaders, representatives of IRI or its affiliates, etc., and as to whether instead of a public auction with all the substantive and formal guarantees of law, there shall take place a disposal on a "fire-sale" basis achieved through private negotiations.

Your Honor, I would be naive and not honest if I did not recognize the difficulties of the situation and above all if I did not recognize the difficulties of the task which the Liquidator, Attorney Giuseppe Siracusa has so ably performed, and I wish here to express my absolute esteem of said gentleman. However, in the presence of a series of acts of political interference and of acts of government which have caused this situation, I believe that the official organs of the bankruptcy proceedings must take a different attitude. It was an act of government that caused the insolvency of ELSI, namely, the illegal requisition ordered by the Mayor of Palermo in his capacity as an official of the Italian Government, which was not revoked in spite of the requests received, by the Prefect of Palermo, who had the duty and the power to do so; it was an act of government which, notwithstanding any false appearance of respect for legal procedures, practically has made and makes it impossible for a private group to participate in the purchase of the ELSI plant, namely, the amply publicized decision of the Italian Government to cause IRI to intervene in order to take over the ELSI plant. It was also an act of government, which is about to be formally completed, which has attempted to separate the interest of the workers in so far as creditors, from the interest of the remaining creditors in maintaining a high value for the ELSI plant, namely, the decision of the Regional Government of Sicily (allegedly suggested by members of the Rome Government) to guarantee to the workers the payment of their severance pay, thus separating this group from the other creditors. Today, in substance, Your Honor, the threatening forecast contained in the letter which the former President of the Sicilian Region, the Honorable Carollo, delivered to the representatives of ELSI on 20 April 1968, is proving to be true:

"nobody in Italy will purchase, namely IRI shall not purchase, either for a low or for a high price, the Region shall not purchase, private enterprises shall not purchase. Let me add that the Region and IRI and anybody else who has any possibility to influence the market will refuse in the most absolute manner to favor any sale."

In consideration of this situation, notwithstanding the difficulties which one may also personally encounter, I believe it is the duty of the Creditors' Committee to take a different stand towards the Government and IRI which permits an adequate protection of the creditors' interest.

In the course of the aforementioned meeting of 29 March 1969, I insisted again that as an alternative to the sale of the plant together with the inventory, the sale of separate lines should also be considered. My insistence was due to the fact that when Raytheon-ELSI intended to proceed with an orderly liquidation of its activities (which was made impossible by the requisition) it did consider as the best way to realize a high value for its assets the sale of separate lines, each line comprehensive of inventory, raw material, work in process and finished products. The reason for this — and I believe that few people in the world have an experience equal to or higher than that of the Raytheon technicians in this field — is that by selling separate lines, one is reaching a market of potential buyers much greater than that of any buyer who may be interested in acquiring an entire plant in a predetermined location that cannot be changed; moreover, the sale of separate lines permits the sale of inventory to the user of the line and therefore to the party which needs it and, as a consequence, at a high price. I realize that an offer of separate lines would be politically an extremely unpopular act and that it might bring about adverse action by the unions such as, for example, the occupation of the plant. On the other hand, this seems to be the only alternative to what will otherwise be a complete depreciation of the ELSI's assets which will cause, as a necessary consequence, an assessment of the bankruptcy in its entirety, of the causes and responsibilities for the same, which does not correspond to the reality, because the bankruptcy and the amount of liabilities not covered by the sale of the assets would be the result not of normal and natural events in bankruptcy proceedings, but rather of political impositions and abuses (pardon me for the expression) which occurred over and over without interruption from the spring of last year until today.

Your Honor, I trust that you will understand the reasons underlying my dissent and why I am expressing it outside and beyond my formal participation in the Creditors' Committee. I believe that I am compelled to make this clarification and a more complete statement of my position by the duties imposed on me by the robes which I morally wear.

(*Signed*) Attorney Giuseppe BISCONTI,
Representative of Raytheon
Europe International Company
in the Creditors' Committee.

8 April 1969.

Annex 63

Submission to Civil and Criminal Tribunal of Palermo by Avv. Giuseppe Bisconti, Dated 10 April 1969

[TRANSLATION OF THE OPPOSITION AGAINST THE JUDGE'S AUTHORIZATION OF THE LEASE TO ELTEL]

CIVIL AND CRIMINAL TRIBUNAL OF PALERMO

OPPOSITION

Submitted to the Honourable Tribunal against the Order by the Honourable Judge in Charge of the Bankruptcy of Raytheon-ELSI (Giudice Delegato) of 8 April 1969.

RAYTHEON EUROPE INTERNATIONAL COMPANY,

represented by Avv. Giuseppe Bisconti, acting as its special proxy pursuant to a special power of attorney executed on 28 August 1968, acknowledged by Notary George B. Klim on 4 September 1968, and legalized by the Italian Consul General in Boston, F. Tonci Ottieri, on 11 September 1968, represented in court by said Avv. Giuseppe Bisconti of the Rome Bar and by virtue of the delegation contained on the external side of this folio also by Avv. Francesco Calamia of the Palermo Bar at whose offices in Palermo, Via Napoli 84, the aforementioned company elects domicile for the purposes of the proceedings instituted hereby,

Whereas, Raytheon Europe International Company (hereinafter called "REIC") is a creditor in the bankruptcy of Raytheon-ELSI S.p.A. (hereinafter called "ELSI") and was admitted as creditor of the same by the Hon. Tribunal; and

Whereas, REIC is represented in the Creditors' Committee of ELSI; and

Whereas, the Creditors' Committee of ELSI at its meeting of 29 March 1969, was called upon to express its opinion on a proposed lease of the ELSI plant to ELTEL S.p.A.; and

Whereas, at said meeting the Creditors' Committee expressed by a majority vote an opinion which was formally favorable to the lease on the condition that ELTEL should buy all the inventory of ELSI at the price of Lire 1,800,000,000; and

Whereas, at said meeting the representative of REIC expressed an unfavorable opinion for the reasons that are restated in a summary way in the minutes of said meeting and that are more amply illustrated in the brief addressed by REIC to the Honourable Giudice Delegato on 8 April 1969, filed with the court on 10 April 1969, a photostatic copy of which is attached hereto and constitutes an integral part hereof; and

Whereas, on 3 April 1969, the Curator in the bankruptcy of ELSI, Avv. Giuseppe Siracusa, reported to the Honourable Giudice Delegato on a petition by ELTEL to obtain a lease on the plant; and

Whereas, by order dated 3 April 1969, the Honourable Giudice Delegato, deeming that the Creditors' Committee had "substantially expressed an unfavorable opinion" on the proposed lease, requested from the Curator a reasoned opinion on the petition submitted by ELTEL and directed him to prepare a new draft lease agreement since the one that had been attached to said petition was vague and incomplete; and

Whereas, on 8 April 1969, the Curator submitted to the Honourable Giudice Delegato a favorable opinon on the lease as follows:

> "In the opinion of this writer, the lease of the plant located on Via Villa Grazia No. 79, subject to certain terms and conditions, is to be considered as a positive fact, also in the interest of the creditors.
>
> Obviously the positive aspect is closely related to the formulation of a lease agreement drafted in such a way that the integrity and the value of the plant, equipment and machinery may be safeguarded also for the future.
>
> The proposed lease shall not in any way represent an obstacle to the judicial sale of the plant, as a safeguard of the institutional purposes of the bankruptcy proceedings.
>
> The rental of Lire 150,000,000 per year, considered abstractly, is neither adequate nor remunerating, however if it is related to the obligations which the lessee shall undertake to safeguard the integrity and to maintain also for the future the value of the plant, it shall on the other hand result to be definitely convenient.
>
> In view of such considerations, the undersigned, notwithstanding the substantially contrary prior opinion expressed by the Creditors' Committee at its meeting of 29 March 1969, is favorable to granting a lease on the plant to ELTEL at the following terms and conditions.
>
> OMISSIS"

and

Whereas, by order dated 8 April 1969, the Honourable Giudice Delegato authorized the lease as follows:

> "THE GIUDICE DELEGATO
>
> Deeming that the lease of the plant, for the reasons explained by the Curator, is advantageous for the creditors collectively
>
> FOR ALL THESE REASONS
>
> Authorizes the Curator to grant to the company ELTEL a lease on the plant as per the petition at all the conditions contained in the draft agreement prepared and transcribed hereinabove."

Now therefore, Raytheon Europe International Company in its name and for its own account as a creditor of ELSI and also in the interest of all the creditors of ELSI hereby submits an

OPPOSITION

against the order by the Honourable Giudice Delegato of the bankruptcy of Raytheon-ELSI S.p.A. of 8 April 1969, for the following reasons:

1. The proposed *lease is not in the interest of the creditors*. The order which is hereby challenged adopts as its own the grounds set forth by the Curator in his opinion. Such grounds really beg the question in that they take for granted the proposition they ought to prove, and in no way indicate what may be the benefit, if any, accruing to the creditors from the lease. Indeed, the opinion of the Curator, adopted as its own by the order challenged hereby, and the draft lease agreement attached thereto, care to indicate some cautions and safeguards to be inserted in

said agreement in order to eliminate or to reduce the prejudice and the risk which would derive therefrom to the bankruptcy estate, and through it to the creditors, from the proposed lease; this itself is evidence that the proposed lease is damaging to the creditors if the party who proposes it is unable to indicate any (even potential) advantage and indicates only the means to cope with sure disadvantages. Therefore, the *grounds for the order* are to be deemed as being absolutely *insufficient*, if not altogether inexistent in substance.

2. The order challenged hereby was issued *notwithstanding the substantially unfavorable opinion of the Creditors' Committee*. The Honourable Giudice Delegato, in his prior order of 3 April 1969, had himself considered said opinion as being unfavorable and had requested the Curator to submit a reasoned opinion on the petition for a lease: this therefore is evidence that the Honourable Giudice Delegato did not think on 3 April 1969 that there had been demonstrated an interest for the creditors deriving from the proposed lease. Since the opinion of the Curator dated 8 April 1969, adopted by the order challenged hereby, does not indicate what such interests may be, *the grounds of the order challenged hereby*, in relation to the prior order of 3 April 1969, are *manifestly contradictory*.

3. *Since the Creditors' Committee has expressed a substantially unfavorable opinion*, as the Honourable Giudice Delegato was the first to recognize, to which creditors is the lease beneficial? Nor can one say that the benefit is represented by the starting up and the maintenance of the plant because (we do not want hereby to enter into an examination of the merits of the proposed lease) *the rental is so low as to represent only a modest share of the depreciation* of the plant constituted by the wear and tear of the same necessarily deriving from their use.

4. In reality, *the lease* represents an enormous, very grave and irreparable prejudice to the creditors, because it *makes in fact impossible a sale to third parties* other than ELTEL (or other than companies in the IRI group or affiliated therewith) of the plant or of individual separate lines; because *it contributes to lower the value of ELSI's assets* through the mechanism of successive auction sales unattended because of the will of ELTEL, of IRI and of the political authorities that are behind them; because *it makes in fact impossible a sale of the inventory* at a reasonable price and puts ELTEL in the position to impose the price of inventory which ELTEL may be interested in acquiring for its own use; and all this for the reasons which the plaintiff has explained in the attached aforementioned brief to the Honourable Giudice Delegato of 8 April 1969, which constitutes an integral part hereof.

5. For the reasons expressed in the attached and aforementioned brief of 8 April 1969, which constitutes an integral part hereof, *the lease has the only effect* (and for the private party which requests it, also the purpose) *of favoring a private party* in relation to the purchase of the ELSI assets. In the absence of an interest for the creditors, as abovesaid, *the order is therefore invalid because of deviation* from the institutional purposes of the bankruptcy proceedings, which are the protection of all creditors through the maximum realization from the assets of the bankrupt. An order issued for the purpose of meeting even valid social needs would constitute a deviation for the same reasons.

6. Notwithstanding any cautions that may be inserted in the proposed lease agreement, the lease would certainly give access to ELTEL to production secrets which are owned by third parties. Since such circumstance cannot be unknown to the Curator, said cautions would not be sufficient to exclude a co-responsibility of the Curator for the consequences of any breach of said secrets. *A court's order cannot ratify an action which by itself originates or is the occasion for a breach of rights of third parties.*

FOR ALL THESE REASONS

Raytheon Europe International Company requests the Honourable Tribunal to revoke immediately the order against which this opposition is filed to prevent and to impede the enormous, very grave and irreparable damage which it would cause to the creditors.

10 April 1969.

Respectfully submitted,
Avv. Giuseppe BISCONTI.
Avv. Francesco CALAMIA.

Annex 64

Decree of the Civil and Criminal Tribunal of Palermo, Dated 9 May 1969

(Translation)

TRIBUNAL OF PALERMO

THIRD SECTION, CIVIL AND BANKRUPTCY MATTERS

Composed as follows:

Dr. Livio Fioriani — Presiding Judge,
Dr. Salvatore Burgio — Judge,
Dr. Vincenzo Badalamenti — Reporting Judge.

Having met in chambers has issued the following:

DECREE

Having taken notice of the proceedings relating to the bankruptcy of Raytheon-ELSI S.p.A.;

Having read the decree of 8 April 1969, by which the judge in charge of the bankruptcy has authorized the curator to lease to ELTEL subject to all the conditions set forth in the draft lease prepared by the curator the industrial plant owned by the bankrupt company;

Having read the preceding complaint, filed in the Chancery on 11 April 1969, and submitted by Raytheon Europe International Company against the aforementioned decree of the judge in charge of the bankruptcy;

Having taken notice of the curator's reports filed in the Chancery on 8 May 1969;

NOTES

It is totally irrelevant that the lease was authorized notwithstanding the substantially unfavorable opinion of the Creditors' Committee. (The majority had expressed a favorable opinion on the condition that the lessee should purchase all the inventory.)

Indeed, as it is well known, the opinion of the Creditors' Committee, except in the case of professional operation (Art. 90 of the Bankruptcy Law) is never binding on the authorities in charge of the bankruptcy. The lease of the plant, pending the definition of the transactions for disposal of the assets (three auction sales already have been deserted), is advantageous to the creditors as a group.

This is true above all in relation to the clauses contained in the lease which were drafted in such a way as to safeguard "also in the future the integrity and the value of the plant, the equipment and machinery" (in such manner had expressed himself (the curator) and the judge in charge of the bankruptcy had adopted the same reasoning).

Indeed, if one takes into account the huge damage deriving to the industrial plant having prolonged absolute inactivity, anybody must be able to see the usefulness and advantages accruing from the lease with the special clauses prepared by the curator.

Amongst such clauses one must emphasize the one under which

> "the lessee agrees to maintain the plant in a perfect state of efficiency and to *redeliver* it at the expiration of the lease *perfectly functioning at the expiration of the lease*, and expressly assumes upon itself any charge and expense relating to the *ordinary* and extraordinary *maintenance* of all the machinery, plant and fixtures as well as the obligation to make any *substitutions* as may be necessary, *even if caused by the normal wear and tear*" (Art. 2).

The curator's office therefore has put itself in the condition to offer for sale and deliver (in consideration of the clauses establishing the right to terminate the agreement in the event of sale — Art. 7) instead of an industrial plant which has been inactive for approximately one year, a plant in perfect efficiency and additionally other reinstated commercial goodwill.

Therefore the lease is advantageous and useful to the creditors and, far from making "impossible the sale" of the plant, makes the same easier and enables and encourages any interested party to take part in the next auction sale.

The rental, taking into consideration above all the obligations undertaken by the lessee by means of the aforequoted clause (Art. 2) must be deemed adequate and represents, moreover, pending the procedure of disposition of the assets, a further advantage to the creditors at large.

Finally, the argument could not be sustained that the lease "notwithstanding the protective clauses contained in the agreement, would certainly give ELTEL access to production secrets belonging to third parties".

Indeed, as the curator has determined

> "the machinery, the test equipment and utensils can be used *differently* for the manufacture of finished products covered by industrial secrets or for manufacture of finished products not covered by such secrets. Certain specified equipment manufactures parts designed and covered by industrial secrets, which, however are not in the nature of licensed finished models."

Now the curator has sealed all originals of the manufacturing specifications and of the drawings and lists which are part of the licensed models and, as may be read in the draft lease agreement, has expressly forbidden to the lessee to use any patents and manufacturing processes owned by third parties.

This being the situation and in consideration of the fact that the mere use of the equipment and machinery does not enable lessee to acquire knowledge of any patented manufacturing processes, anybody must see how the aforementioned complaint is unfounded.

With regard to the aforementioned specified equipment, it must be noted that they cannot be used in any way by the lessee which does not know the manufacturing methods of the designed parts referred to hereinabove.

Therefore, in the light of the above consideration the complaint must be rejected.

FOR ALL THE ABOVE REASONS

The tribunal rejects the aforementioned complaint.

Palermo, 9 May 1969.

Dr. Livio FIORIANI,
The Presiding Judge.

Annex 65

MINUTES OF CREDITORS' COMMITTEE MEETING, RAYTHEON-ELSI, S.P.A., DATED 2 MAY 1969

[See also Unnumbered Documents Submitted with the Counter-Memorial of Italy, Vol. II, Exhibit No. III-29]

(Translation)

BANKRUPTCY RECEIVERSHIP FOR SOCIETÀ RAYTHEON EL-SI, S.P.A. 90125
PALERMO — VIA VILLAGRAZIA, 79

Palermo, 26 April 1969.

(Registered Mail)

Mr. G. B. Riccobono Palermo (Full address on original)	Raytheon Company Attention: Attorney G. Bisconti, Rome.
Mr. Antonino Miserendino Palermo	Banca Nazionale del Lavoro, Palermo Office.
	Mr. Silvio Laurin Palermo

The Creditors' Committee will meet on Friday, 2 May 1969, at 12.00 noon, at the above address, Via Villagrazia No. 79, to deliberate and vote on the following issue:

The purchase by EL.TEL. of all the material currently in the production line at the price of Lire 105,000,000. Said material was inventoried and appraised at Lire 217,000,000. Classified military material, currently in the appropriate production line valued at about Lire 24,000,000, is not included in the sale.

Sincerely,

The Liquidator,
(Signed) Attorney Giuseppe SIRACUSA.

CREDITORS' COMMITTEE MEETING

On 2 May 1969, in the offices of the former Raytheon ELSI S.p.A. in Via Villagrazia 79, Palermo, a meeting was held by the Creditors' Committee comprised of Mr. Riccobono G. Battista, Dr. Bruno Lipari, Eng. Silvio Laurin, Attorney Egidio Rinoldi sitting in for Attorney Giuseppe Bisconti as per attached power of attorney, and Mr. Antonino Miserendino.

The liquidator, Attorney Giuseppe Siracusa, informs the committee that in the production lines of the plant, material in various stages of completion was left and has been there since the shut-down of the operation in March of 1968. This material has been inventoried and appraised at the total value of Lire 217,300,000.

In the lease agreement the liquidator obligated himself to remove said material from the production lines and to have it stored in the warehouse. However, the removal involves certain losses and expenses. The liquidator indicates that the above material valued at Lire 217,300,000 does not include material owned by military authorities, which was inventoried and appraised separately at Lire 24,000,000. For the material inventoried by Eng. D. Benedetto at Lire 217,300,000, and which, according to the technicians is not covered by military secret, ELTEL has offered an as-is purchase price of Lire 105,000,000. The liquidator invites the committee to express their opinion regarding the purchase offer by ELTEL. Attorney Rinoldi declares that before the committee votes on the possible sale, it is necessary to make sure that the material in question is not subject to military secrecy requirements, that is, not classified. Attorney Rinoldi expresses his opposition to the sale in view of the aforesaid, and of the following: At least in the case of some items, the material is in various stages of completion and continuation of the production process constitutes, or might constitute, a violation of industrial know-how or patent rights exclusively proprietary to third parties. ELTEL, which is not a co-owner of the bankrupt company, has no right to use the licenses and know-how of ELSI. Also, the offer by ELTEL was made while there is a claim pending against the provisions of the Court which authorized the lease of the plant, and the lease itself might, therefore, be revoked. Consequently, ELTEL's application represents an improper interference with current Court proceedings. The price offered by ELTEL is ridiculously low, being considerably below the already underpriced value set for the inventory. Based on information requested from Semiconductors S.p.A., California, ATECO, and Electrovalvula S.p.A. with respect to the possible acquisition of the Discharge-Lamp and Kinescope lines, and relative inventory, said lines would bring a price corresponding to the appraisal made and, therefore, we do not see why we should authorize ELTEL to purchase the materials requested by them at a price even lower than 50 per cent of the appraised value.

The offer by ELTEL proves, also with respect to the price, what has been stated by Raytheon Europe International Co. in their memorandum to the Court dated 8 April 1969, and in the complaint submitted to the Court on 10 April 1969, namely, that by virtue of the lease by ELTEL, that company can dictate the terms of the purchase of the inventory of interest to them, making it practically impossible to sell the inventory at a reasonable price. An auction is scheduled for 3 May 1969, for the sale of the entire ELSI operation in one block. The sale has been authorized with a formal provision stipulating the terms and conditions.

It is inconceivable that, contrary to normal practice and to the above-mentioned provision authorizing the sale, the application by ELTEL should be taken into consideration, even if just by the Creditors' Committee, before the auction is held and before a final authorization is issued for the separate sale of the inventory. ELTEL's offer demonstrates that this company seems to be operating on the basis of a well thought-out plan which is, in essence, geared to a maximum devaluation of ELSI's business from which ELTEL alone would benefit. It is, therefore, difficult to understand why, reversing the order and the procedure regarding the sale of the operation, one should consider the ELTEL request prior to the public auction, when such an offer by ELTEL can be of advantage to no one but ELTEL, which is a private party. All this, and the effect of leasing the plant to ELTEL, makes it in fact impossible to sell the facility to anyone other than ELTEL (or companies of the IRI group), and contributes to the devaluation of the ELSI operation, thus favoring a private party at the expense of the creditors, with deviation from the institutional purposes (next sentence illegible).

In voting against ELTEL's proposal, Attorney Rinoldi confirms what was the subject of the memorandum of 8 April 1969, and the tenor of the complaint of 10 April 1969, submitted by Raytheon Europe International Co., in connection with the proposal and the provision authorizing the leasing of the plant to ELTEL.

The ELTEL proposal, on which the Creditors' Committee was asked to vote, is only an act which is part of a series of acts by the Government which, ever since spring of last year, have in fact been essentially aimed at a confiscation against a private entrepreneur.

Attorney Rinoldi deposits the original power of attorney given to Attorney Bisconti by Raytheon Europe Int. Co. The other four members of the Creditors' Committee, considering the difficulty of selling the inventory without also disposing of the equipment and the fact that this reduces to a minimum the value of the inventory sold separately from the facility itself, and also considering the fact that the inventory has been sitting in the production lines for a long time, and considering that, according to Dr. Santoro, no offer was received from anyone else by the Clerk's office of the Court of Palermo, as of 1.45 p.m., for participation in the auction scheduled for 3 May — the deadline being today at 1.00 p.m. — vote in favor of the sale of the material in the production line for the price of Lire 105,000,000.

(Signed) LIPARI, Egidio RINOLDI, Eng. LAURIN, Riccobono G. BATTISTA, Antonino MISERENDINO.

The Liquidator
(Signed) Attorney Giuseppe SIRACUSA.

Annex 66

NOTICE OF AUCTION TO BE HELD 3 MAY 1969, *THE NEW YORK TIMES*, 8 APRIL 1969, PAGE 71

LEGAL NOTICE

TRIBUNALE DI PALERMO — SEZIONE FALLIMENTARE
(TRIBUNAL OF PALERMO — BANKRUPTCY DIVISION)

It is made known that on 3 May 1969 at 10 a.m. in Palermo the judge in charge of the Raytheon ELSI S.p.A. bankruptcy will proceed with the sale by auction of the Raytheon ELSI S.p.A. electronic complex standing on 48,103 square meters of land, with access from 79 Via Villagrazia, Palermo, Italy, and composed of buildings, facilities, machinery, miscellaneous equipment and furnishings for the manufacture of cathode ray tubes, microwave tubes, X-ray tubes, surge arresters, semiconductors and complex components, as well as with the contemporaneous and unseparable sale of the entire inventory as described in the inventory statements and existing in the warehouses at the plant, in Milano and in Rome, in the "Magazzini Generali" and customs warehouses in Palermo. Excluded from the sale are only some movable goods indicated in the court provision of 3/31/1969.

Upset price for the plant and inventory is Lire 5,000,000,000, of which 3,200,000,000 (3.2 billion) are for the plant and equipment and Lire 1,800,000,000 for the inventory.

Prospective bidders must post, with the "Cancelleria Del Tribunale" (court office), a Lire 450,000,000 bond and Lire 650,000,000 for foreseeable expenses in the forms prescribed for judicial deposits within 1 p.m. of 2 May 1969.

Biddings above the upset price must be not less than Lire 6,000,000.

Expenses and taxes are at the awardee's charge; payment of price to be made within 30 days from the adjudication date.

For additional information apply to the Bankruptcy Curator, Mr. Giuseppe Siracusa, Attorney at Law, 84 Piazzale Ungheria, Palermo, Italy, Telephone 217480, or to the "Cancelleria Del Tribunale," Sezione Fallimentare (Court Office, Bankruptcy Division), Palermo, Italy.

The Master
(Dr. Alberto ANANIA)

Annex 67

Minutes of 3 May 1969 Auction of ELSI's Assets

(Translation)

Judicial Files
41/68
Cron. 2119.

RECORD OF FAILED AUCTION SALE OF THE PROPERTY AND SUPPLY STOCK OF THE BANKRUPT RAYTHEON ELSI S.P.A.

On 3 May 1969, trustee in bankruptcy Attorney Giuseppe Siracusa appeared before Judge V. Badalamenti in the presence of the undersigned court clerk in Palermo.

It is noted that all formalities for the sale scheduled for today on the basis of the ordinance of 31 March 1969, have been observed with the objective of bringing today's auction to the public's attention.

It is also noted that no offer of participation in the auction has been presented at the Chancellery.

In view of the above, the Judge declares the auction failed.

Court clerk's signature. Judge's signature.

Annex 68

SUBMISSION TO THE CIVIL COURT OF PALERMO BY ELTEL, S.P.A., DATED 16 APRIL 1969

CIVIL COURT OF PALERMO, BANKRUPTCY DEPARTMENT

BANKRUPTCY OF RAYTHEON, EL.SI. 41/68

JUDGE DR. V. BADALAMENTI

As noted by Your Honor, the ELTEL Company has today proceeded to draw up a lease for the factory at Guadagna owned by the bankrupt Raytheon ELSI S.p.A.

We hereby wish to declare once again that ELTEL Company is prepared to acquire the said facility, taking the necessary steps which will assure stable administration of the facility as an indispensable prerequisite for the future of this industrial operation which is to provide jobs for the workers of the bankrupt company.

In its ordinance of 31 March 1969 the Court has scheduled a public auction for 3 May 1969 for the sale of the facility with equipment at a base price of L.3.2 billion and for the simultaneous sale of the supplies (merchandise, raw materials and semifinished goods) at a base price of L.1.8 billion.

ELTEL, while not intending to bid for the purchase of the said supplies since these are not indispensable for administration, is prepared, as of now, to acquire the facility and its equipment and tools. For this purpose, ELTEL is willing to offer the amount of L.3,205,000,000 (three billion two hundred and five million lire) and to make an appropriate bid at the public auction on 3 May 1969. We shall be awaiting the Court's instructions relative to the requirements that must be met to that end.

This declaration shall be binding for the undersigned company until 31 May 1969 (handwritten change: 15 June 1969 — initialled).

Respectfully

ELTEL.
Industria Elettronica Telecomunicazioni S.p.A.
(Signature)
President

Palermo, 16 April 1969

Annex 69

SUBMISSION TO THE CIVIL AND CRIMINAL TRIBUNAL OF PALERMO BY TRUSTEE GIUSEPPE SIRACUSA, DATED 3 MAY 1969, SUBSEQUENT ORDER BY THE TRIBUNAL, DATED 5 MAY 1969

(Translation)

THE HON. JUDGE IN THE BANKRUPTCY CASE OF RAYTHEON ELSI, S.P.A., AT THE COURT OF PALERMO

The undersigned Attorney Giuseppe Siracusa, receiver/liquidator in the above bankruptcy case, submits and requests the following:

At the time of cessation of the factory's activities certain materials were left in the production line in various stages of completion, and remained there for about a year. This material was inventoried at a total value of L.217,300,000. According to the lease agreement the undersigned is obligated to remove the material in question which removal costs a considerable amount of money and time and results in a substantial reduction in value of the material proper. ELTEL Company has gone on record as being prepared to purchase the material in question for the total amount of L.105,000,000. In view of the fact that the material is one-year old and difficult to sell while its removal from the assembly line would only reduce its value, the undersigned is in favor of selling it for L.105,000,000. The creditors' committee, in its session of 2 May 1969 has agreed to this by majority vote, for the same considerations.

Raytheon Europe Company voted against it, giving long and detailed explanations.

On the basis and in consideration of the above, the undersigned requests the Court's permission to sell to ELTEL S.p.A. all of the said material left unfinished in the production line and inventoried at a value of L.217,300,000, for the reduced price of L.105,000,000.

Palermo, 3 May 1969.

The Liquidator,
Attorney Giuseppe SIRACUSA.
(Signature)

(Handwritten subscriptum, not very legible:)

The Presiding Judge,

having read the above request and reviewed the opinions expressed by the creditors' committee and in particular the observations by the representative of Raytheon Europe Company;

and having considered the claim for part of the material the sale of which has been requested;

finds that before any decision can be made relative to the sale of the material in question, the liquidator is to ascertain whether the release of any of the material to be sold and subsequent production (by the buyer) could possibly constitute a violation of the rules governing proprietary production know-how or any patent rights belonging exclusively to third parties. It is decided that in the affirmative case the material in question is to be removed from the production line, and the liquidator may propose the sale of the remaining material with the exception, at any rate of items that may not be sold and therefore can only be removed from the production line (highly illegible).

Palermo, 5 May 1969.

(Signature of Judge)

The liquidator,

Having read the Court's decision of 5/5/69 as stated above, and having taken into consideration that to ascertain by the nature of some of the items in the production line whether their further processing "could constitute a violation of production secrets or patent rights belonging exclusively to third parties" involves an essentially technical determination, feels that it is necessary, and requests the Court, to nominate a technical consultant to make the said technical determination.

Palermo, 7 May 1969.

The liquidator,
(Attorney Giuseppe SIRACUSA).

(Final endorsement handwritten, totally illegible.)

Annex 70

SUBMISSION TO THE CIVIL COURT OF PALERMO BY ELTEL, S.P.A., DATED 27 MAY 1969

(Translation)

The Hon. Judge
Dr. Badalamenti
at the Civil Court of Palermo
Bankruptcy Department.

BANKRUPTCY OF RAYTHEON ELSI S.P.A. — 41/68, COURT OF PALERMO

The undersigned ELTEL — Industria Elettronica Telecomunicazioni S.p.A. of Palermo, with a registered capital of L.1 million fully paid up, hereby declares its desire to bid at an auction for the acquisition of the electronics firm Raytheon ELSI S.p.A. of Palermo, located on a piece of land 48,103 square meters in area, and comprising buildings, equipment, machinery, various tools and implements for the production of cathode ray tubes, microwave tubes, X-ray tubes, lightning arresters, semiconductors and complex components, and for the simultaneous purchase of all the merchandise and supplies described in the inventory list and on hand at the warehouses of the facility, at warehouses in Milan and Rome, at general and customs warehouses in Palermo, all of these items being described in more detail in the various ordinances on file at the Clerk's Office of the Palermo Court and particularly in the ordinance of 31 March 1969. For this purpose ELTEL — Industria Elettronica Telecomunicazioni S.p.A. is prepared to offer the amount of L.4000,000,000 (four billion lire) at a public auction held by order of the Court.

Respectfully Yours,

ELTEL
Industria Elettronica Telecomunicazioni S.p.A.
(Signature)
President.

Palermo, 27 May 1969.

Annex 71

MINUTES OF CREDITORS' COMMITTEE MEETING, RAYTHEON-ELSI, S.P.A., 6 JUNE 1969

(Translation)

On 6 June 1969, at the office of Attorney Giuseppe Siracusa at Piazzola Ungheria 84 in Palermo, a meeting of the creditors' committee took place which included the following gentlemen:

1. Dr. Bruno Lipori, representing BML, president;
2. Attorney Giuseppe Bisconti, representing Raytheon International;
3. Reg. G. B. Riccobono;
4. Mr. Antonio Misumolino;

Absent: Ing. Silvio Lancia who was away from Palermo.

The liquidator suggests to the committee that an auction be scheduled for 12 July of this year, with the base price being Lire 4 billion of which Lire 3.2 billion would be for the buildings and equipment and Lire 800 million for raw materials and semifinished goods, excluding items intended for semiconductor production and excluding all finished goods. The committee agreed by majority vote. Dr. Lipori abstained and Attorney Bisconti voted against it for the reasons set forth in a previous report.

LSC

(Signed) LIPORI.

(Signed) BISCONTI.

(Signed) RICCOBONO.

(Signed) MISUMOLINO.

Annex 72

NOTICE OF AUCTION TO BE HELD ON 12 JULY 1969

(Translation)

TRIBUNAL OF PALERMO — BANKRUPTCY DIVISION

NOTICE OF THE SALE OF THE RAYTHEON ELSI S.P.A. PLANT

It is herewith made known that on 12 July 1969, at 10.00 a.m., an auction sale will be held in Palermo before the judge in charge of the bankruptcy case of the Raytheon ELSI S.p.A. for the purpose of auctioning off the Raytheon ELSI electronics plant located on a site measuring 48,103 square meters accessible from Via Villagrazia 79 and consisting of buildings, installations, machines, various equipment, and furnishings for the production of cathode ray tubes, microwave tubes, X-ray tubes, dischargers, semiconductors, and complex components. At the same time, the raw materials and partly finished goods in the plant and the General Warehouses of Palermo will be sold except those required for the production of semiconductors.

Also excluded from the auction is other movable property as mentioned in the injunction.

The reserve price for the plant and the raw and semi-manufactured materials is four billion lire, of which three billion two hundred million apply to the plant and equipment, and eight hundred million lire to the raw materials.

Those intending to participate in the auction must deposit with the Court Clerk's Office L.350,000,000 (three hundred and fifty million) as security, and L.480,000,000 (four hundred and eighty million) for foreseeable expenses, in the form of a bid bond, before nine o'clock a.m. of 12 July 1969, the day of the auction.

Bids must exceed L.6,000,000 (six million lire).

Costs and taxes are borne by the highest bidder; remittance must be made within thirty days from award of bid.

For further information contact the trustee in bankruptcy, Attorney Giuseppe Siracusa, Piazzale Ungheria 84, Palermo, Tel. 217.480, or the Court Clerk's Office of the Tribunal of Palermo, Bankruptcy Division.

The Court Clerk,
(Signed) A. ANANIA.

Annex 73

LETTER FROM JOSEPH OPPENHEIM, VICE-PRESIDENT, RAYTHEON COMPANY, TO INDUSTRIA ELETTRONICA TELECOMUNICAZIONI, S.P.A., DATED 26 JUNE 1969

26 June 1969.

Industria Elettronica Telecomunicazioni S.p.A.
via Villagrazia 79
Palermo, Italy.

Gentlemen,

This is to confirm the information given your representatives in Lexington, Massachusetts, today.

If ELTEL purchases those assets of ELSI offered at auction by the attached published advertisement, on 12 July 1969, for a price of at least the L 4 billion minimum as set forth in the Notice of Auction, Raytheon Company will grant to ELTEL a license under its existing Italian patents and its proprietary information to produce the microwave tubes being produced by ELSI at the time of its bankruptcy, on terms at least as favorable as those in effect for ELSI at that time.

Very truly yours,

Raytheon Company,
International Affairs,
(Signed) J. OPPENHEIM,
Vice President.

Annex 74

TRANSCRIPT OF BANKRUPTCY HEARING, CIVIL AND CRIMINAL COURT OF PALERMO, 13 JULY 1969

(Translation)

COURT OF PALERMO
BANKRUPTCY HEARING

Bankruptcy of Raytheon EL.SI. S.p.A.

Record of Adjudication.

The session takes place on 13 July 1969, at 10 a.m., in the public courtroom of the IIIrd Civil District of the Court of Palermo, before the Hon. Judge Dr. Vincenzo Badalamenti, assisted by the undersigned Clerk and by the bailiff, Mr. Chiarello Ignazio, and attended by Attorney Giuseppe Siracusa in his capacity of receiver/liquidator of Raytheon El.Si. S.p.A., who, in accordance with sales ruling of 7 June 1969, requests that one proceed with the sale of the industrial complex comprising real property, buildings, furniture, machines and equipment, raw materials and semifinished goods, etc., as described and identified in the said ruling which was signed and published in conformance with the guidelines given by the presiding Judge as documented in the records.

It is stated that on 11 July 1969 the Clerk's Office received an application for participation in the auction on the part of Mr. Ingo Ravalico in his capacity of vice-president and legal representative of ELTEL-Industria Elettronica Telecomunicazione S.p.A., located at Via Villafranca No. 81, Palermo, which company has offered the amount of L.4,006,000,000, thereof L.3,205,000,000 for the acquisition of the facility and equipment and L.801,000,000 for raw materials and semifinished goods, depositing the required total of L.830,000,000, comprising L.350,000,000 as the security deposit and L.480,000,000 for estimated expenses. No other offer was presented.

It is recorded that the hearing is attended by Mr. Ingo Ravalico in the capacity indicated above. The presiding Judge then declares the auction opened. Mr. Ravalico, on behalf of his company, offers the amount of L.4,006,000,000 for the purchase of the property and materials mentioned and described in more detail in the sales ruling. The purchase offer for L.4,006,000,000 is not bettered by anyone else during the bidding time ("the time it takes to consecutively burn three new candles").

The said Mr. Ravalico, on behalf of his company, requests that the property outlined above be adjudicated and an appropriate order of ownership transfer be issued, making reference to the request already contained in the application for participation in the auction, for invocation of all the benefits provided for in the DLCPS of 14 December 1957, No. 1598, and of all corresponding national and regional incentive benefits applying to the Mezzogiorno (underdeveloped Southern Italy) and the Island of Sicily, including the registration fee and tax for the said ownership transfer order under the provisions of Article 109 of the TU of the legislation governing the Mezzogiorno as approved by DPR of 30 June 1957, No. 1523, applying to the purchase, conversion, reactivation and modernization of the said industrial facility. He also requests authorization, per Articles 508 and

585 of the CPC, to work out an agreement with the registered mortgagees for the takeover of the bankruptcy debt owed them by Raytheon El.Si. S.p.A., within the limits of the price at which the adjudication was made.

Also present are Dr. Filippo Nicastro, representing IRFIS per special power of attorney granted him by the president, Attorney Rocco Gullo on 9 July 1969, and drawn up by Notary Public, Mr. Cesare Di Giovanni, lic. No. 165288; and Attorney Antonino Occhipinti, representing the Bank of Sicily per special power of attorney granted by Dr. Gerlando Micciche, acting director of the Palermo office of the Bank of Sicily, and certified on 10 July 1969 by notary public Mr. Antonino Schifani, lic. No. 11951; which gentlemen declare, on behalf of the institutions they represent, their consent to the request by the offeror to assume the debts of the bankrupt Raytheon El.Si. S.p.A. owed the said institutions, in conformance with the law and the conditions of their mandate.

Since there is only one bidder, the receiver/liquidator offers no opposition to the adjudication of the property in question to ELTEL S.p.A. and to the assumption, by ELTEL, of the debt owed by the bankrupt company with acquittance of the latter in respect of the mortgage holder IRFIS except for expenses and for possible claims of third parties. The assumption of the debt by ELTEL will be carried out as directed by the Deputy Judge.

THE PRESIDING JUDGE,

on appropriate advice by the receiver on the basis of the above and having duly considered the opportunity to accept ELTEL's offer, adjudicates to ELTEL the following property:

The electronics firm Raytheon El.Si. S.p.A. located on a piece of land covering about 48,103 square meters facing Via Villagrazia No. 79, registered under deed No. 51345 of the NCT of Palermo, sheet No. 72, part 203 sub. b and part 204 sub. b, sheet 73, parts 85, 307, 225, 226, 230, 233, 231, 234, 455, 456, bordering on the north side on the Oreto river, in the south on Via Villagrazia, in the east on Cassino and in the west on Guaniana, consisting of buildings, equipment, various machines and appurtenances and tools for the manufacture of cathode ray tubes, microwave tubes, X-ray tubes, conductors, semiconductors and complex components as described in the technical report by Professor Ing. Mario Puglisi dated 11 October 1968, which is hereby made an integral part of the records.

Raw materials and semifinished goods on hand at the facility and in the Palermo warehouse (excluding those intended for semiconductor productions) belonging to the electronics firm mentioned above and described in the inventory on file. Excluded from the sale are the goods claimed by third parties or raw materials and semifinished goods withdrawn by the receiver or used for maintenance work and thus not available. Also excluded are raw materials and semifinished goods intended for the production of semiconductors and all those items not on hand at the factory except those stored in the aforesaid warehouses. The adjudicator has inspected all the items adjudicated and has convinced himself of their condition; hence, a request for price reduction cannot be considered even though no guarantee can be given, which also applies to the provisions of Article 1437 of the Civil Code. Also excluded from the sale are all the finished products regardless of location, motor vehicles, equipment of the Milan and Rome offices, goods on consignment with customers, goods with agents against deposit, and any material and equipment in the factory which are the property of Nato (administrative headquarters). The adjudication of the facility is on an "as is" basis for the real property buildings, equipment, tools and machinery as well as the raw materials and semifinished goods, with no responsibility or guarantee whatsoever on the part of the receiver/liquidator in respect of charges, obligations, easements, etc.

The price of L.4,006,000,000 includes L.3,205,000,000 for the factory and equipment and L.801,000,000 for raw and semifinished materials.

Under the provisions of Articles 508 and 585 of the CPC, the court authorizes as part of the price the takeover of only the mortgage debt of the bankrupt company with the IRFIS, Regional Institute for Industrial Financing in Sicily, up to the amount of L.2,180,000,000 and makes allowance for fees and expenses as well as possible claims by third parties. It is directed that the difference of L.1,476,000,000 with the security deposit already is to be deposited in the manner described in the sales ruling.

The cost of the transfer and related expenses will be borne by the buyer.

It is noted that the buyer has requested the right to take advantage of the fiscal benefits connected with industrialization of the Mezzogiorno and Sicily and, in particular, that the transfer order be registered at a fixed fee.

The session here recorded closed at 11.40 a.m.

Annex 75

IRI. ISTITUTO PER LA RICOSTRUZIONE INDUSTRIALE, 1985 *YEARBOOK*, PAGES 260-264

[Not reproduced]

Annex 76

JUDGMENT OF PREFECT OF PALERMO, DATED 22 AUGUST 1969

(Translation)

22 August 1969.

No. 29779 GAB

REPUBLIC OF ITALY

THE PREFETTO OF PALERMO

Having seen the appeal proposed by Raytheon-ELSI S.p.A., a company with head offices in Palermo, Via di Villa Grazio 79, by its Managing Director, Mr. Justin J. Guidi, domiciled in Rome, Via Bissolati 76, at Prof. Avv. Luigi Galateria's and Avv. Giuseppe Bisconti's office.

AGAINST

the city of Palermo represented by its Mayor,

FOR THE ANNULMENT OF

the order of 1 April 1968, notified on 2 April 1968, issued by the Mayor of the City of Palermo, by virtue of Article 7 of law No. 2248 of 20 March 1865, attachment "E" and of Article 69 of the decree law of the President of the Sicilian Region No. 6 of 29 October 1955, by means of which it ordered the immediate requisition for six months of the plant and relative equipment owned by the appellant;

In consideration of the fact that, by means of the above appeal, the appellant, after having briefly summarized the life and the events of the company, claims that the appealed order is unlawful for the following reasons.

(1) Violation of Article 7 of Law No. 2248 of 20 March 1865, Attachment "E" and of Article 69 of DLPRS No. 6 of 21 October 1955 on the Administrative Organization of the Local Government in the Region of Sicily

The appellant points out that Article 7 of the above-mentioned law of 1865

> "does not govern a specific and autonomous power to take away property, even less so a power of requisition; it only constitutes the statement of a principle (possibility of disposing by the administrative authority of the private property in case of necessity) which has the character of a general principle and which is implemented in other provisions of law concerning specific matters (requisition, expropriation, occupation, etc. . . .)."

Therefore, the appellant holds that the Mayor, in issuing his order, could not refer to Article 7, but he should have instead referred to and applied the special rules governing requisitions.

To support its assumption, the appellant makes reference to the decision rendered by the Council of State in plenary Meeting ("Consiglio di Stato in adunanza plenaria") on 23 November 1929. [The appellant] also points out that the Mayor could not make reference to Article 69 of DLPRS No. 6 of 21 October 1955, but had to make reference to and apply the provisions of law concerning requisitions instead of referring to provisions which provide in general for emergency and urgent orders.

(2) *Violation of Article 7 of Law No. 2243 of 20 March 1865, Attachment "E". Excess of Authority by Reason of Lack of Competence*

The appellant, on the basis of the provision of law No. 996 of 30 November 1950, which stated that the orders issued by the Prefects, in the exercise of their powers, according to Article 7 of the above-mentioned law of 1865, are definitive orders, draws the conclusion that "there being no mention [in the above-mentioned law of 1865] or orders issued by the Mayor according to Article 7, it is appropriate to hold that the Mayor has no power to issue them".

On the other hand [the appellant] assumes, referring to the case law, that the Mayor, even though the power to issue emergency and urgent orders was in his competence, in order to exercise such power it is necessary that the urgency and the circumstances be such as not to permit the Prefect to intervene.

Therefore, the appellant observes that there was no ground for the Mayor issuing the order, since "the Prefect had been directly informed by the officers of the company of the resolution to dismiss the employees at least ten days before the actual dismissal".

(3) *Violation of Article 69 of DLP No. 6 of 29 October 1955*

The appellant, from the examination of the above-mentioned Article 69, draws the conclusion that the Mayor, before issuing the order of requisition, had the duty to communicate to the company the order to re-open the plant, fixing a term for this.

[The appellant] from this assumption draws as a consequence the violation of Article 69.

(4) *Excess of Power by Reason of Lack and Erroneousness of Legal Ground*

The appellant challenges the existence of the ground of the urgency and grave necessity which should have determined the issuance of the order [of requisition], alleging that the dismissal of the employees did not provoke either partial or general strikes, contrary to what is stated in the motivation of the order [of requisition].

[The appellant] also holds that no act of violence against persons and property, nor the occupation of the plant, happened; therefore "that situation of grave necessity which the law requires to exist as the ground for the issuance of an order of requisition" was not existing.

About the statement contained in the appealed order, according to which "the situation itself is particularly alarmed and sensitive, therefore it cannot be excluded that unforeseeable actions which might perturb the public order may occur", the appellant, in accordance with the decision of the "Council of State" (5th Division, 9.15.1960; 5th Division 6.3.1960, No. 692), points out that the grave necessity has to be actual and not supposed and that "the requisitions, determined by *the mere subjective fear that facts, fit for perturbing the public order may occur, are to be held to be unlawful*".

(5) *Excess of Authority by Reason of its Use for Other Objectives*

The appellant, after stating that the Public Administration, before issuing an order of requisition, has the duty to carry out all the necessary activity to achieve its purposes with the least possible sacrifice for the citizens, holds that the National and Regional Government and the City of Palermo "if they really wanted to protect the public economic interest of the Region of Sicily, should have promoted the indispensable public interventions repeatedly invoked by the company".

[The appellant] assumes that the use of authority [by the Public Administration] for other objectives lies in the circumstance that the Public Administration, after having remained passive in front of the serious financial conditions of the company, presumed to be able to solve the problem by means of issuing the order of requisition in order to elude the criticism of the public opinion.

It observes, finally, that the order was unsuitable for satisfying the regional public interest because it deprived the plant of the highly qualified support from the technical personnel of the Raytheon Company, and because the requisition could not "create . . . favorable market conditions for the electronic products which might have helped to resolve the financial and industrial problem of the plant".

Having considered the fact that the City, in its defence, claims the groundlessness of the reason on which the appeal is based, assuming the following:

(1) That Article 7 of law No. 2248, of 20 March 1865, attachment "E", gives the Public Administration the power to intervene, by taking possession of the private property, whenever the urgency and the grave necessity do not permit to act otherwise; and that, if what the appellant assumes about the necessity to resort to specific provisions of law was true, there would be no reason for Article 7 of the above-mentioned law or for Article 69 of the law on the Organisation of the Local Government in the Region of Sicily, being in existence;

(2) That the question of the competence of the Mayor, in his capacity as Officer of the Government, to issue orders of requisition of private property, has definitely been clarified by the uniform case law, and that the provision of law No. 996 of 11 November 1950, has been interpreted by the Courts in the sense that only the orders issued by the Prefect are to be held to be definitive, while those issued by the Mayor, in his capacity as Officer of the Government, are subject to be appealed to the higher authority; and that, as far as the ground of the urgency is concerned, it is to be considered as the indispensable ground to requisition the private property;

(3) That from Article 69 of DLP No. 6 of 20 October 1955, it is not inferred what is stated by the appellant, since the provision "gives generically, in the most discretionary form, to the Mayor, in his capacity as Officer of the Government, [the right] to take informal measures made necessary by an urgent emergency and situation"; and that the reference to Article 69 has to be considered as absorbed by the reference to Article 7 of the law of 1865;

(4) That the objections of excess of authority for lack and erroneousness of the legal grounds is also unfounded, since, at that time, the circumstances (occupation of the plant, general and partial strikes, parades through the town, etc. . . .) and the motives which determined the issuance of the appealed order did in fact exist;

(5) That the order is not to be connected with alleged non-performance by the Government, in order to challenge its validity; "in the case in point, it is necessary only to ascertain whether or not the urgent necessity existed for the Mayor to issue the order in question, by virtue of his own powers"; such grounds were existing at the time of the issuance of the order of requisition, since "at that time there was a danger of public disturbances, and the fear that such disturbances could become even more serious which justified the

> order of requisition, which was directed also at preventing Raytheon-ELSI from engaging in further actions which might even more prejudice the above-mentioned already serious situation".

Having held, first in the merit, that the assumption of the appellant relative to the violation of Article 7 of law No. 2248 of 20 March 1865, Attachment "E" (the appellant assumes that, to order the requisition, the Mayor should have referred to the specific rules governing the matter), has to be rejected, since it is undisputed, in case law and legal doctrine, that the Public Administration is empowered by the above-mentioned Article 7 to dispose of the private property whenever the necessity exists to face a situation of actual and imminent danger for a public interest (public health, public order, etc., . . .) and, therefore, the grounds of an urgent emergency are given.

On the other hand, it is evident that, in the event the assumption of the appellant was founded, the provision of Article 7 would be deprived of any content and, practically, would remain as a mere statement of a principle. However, it is evident that the law-maker intended by this provision to allow the use of the power where the urgency and the circumstances make it necessary.

The same is to be said as far as Article 69 of the law on the Organization of the Local Governments in the Region of Sicily is concerned.

The lack of competence of the Mayor to issue autonomous orders of requisition, according to Article 7 of the law of 1865, assumed by the appellant, is also to be rejected, since the competence of the Mayor is almost unanimously admitted by legal doctrine and case law (see decisions of the Council of State No. 132, of 2 February 1952; No. 61 of 15 January 1955; No. 1008 of 17 November 1956; No. 1137 of 18 December 1965; and decision of the Council of Administrative Justice — "Consiglio di Giustizia Amministrative" — of the Region of Sicily, No. 212, of 11 June 1956).

In the same way, it is undoubted that the measure to dispose of private property is included in those emergency and urgent measures that the Mayor can take according to Article 69 of DLPRS of 1955, which reflects Article 153 of the Communal and Provincial Law No. 148 of 3 February 1915.

The ground of urgency is not to be considered as the possibility or impossibility to inform the Prefect, but as the indispensable ground to requisition the private property.

Once the competence of the Mayor has been ascertained, it is necessary to ascertain whether in the situation there were the grounds for the exercise of the power.

There is no doubt that the goal to which the requisition was directed could not be actually achieved by the order, even though — in theory — in the case in point, the grounds of the grave public necessity and of the emergency and urgency which caused the issuance of the order may be held to be existing.

This is proved by the fact that the activity of the company was neither resumed, neither might it be resumed.

Therefore, the order is destitute of any juridical cause which may justify it or make it enforceable.

In fact, the Mayor believed to be able to face the situation existing in Raytheon-ELSI's plant by means of an order of requisition, clearly without taking into consideration the fact that the situation of the company — for functioning — economical reason and for reason of market — was such as not to permit the continuation of the activity, unless by means of interventions by the responsible organs directed to solve the financial and industrial problems of the company.

The requisition did not change anything in the situation of the company; this is proved by the fact that neither the stopped activity was resumed, nor, as a consequence of the order, more favorable conditions were created in the company. On the contrary, the situation of insolvency determined the declaration of bankruptcy of the company, with the consequence that the plant was taken away from the disposability of the Public Administration.

It is also important to emphasize that the plant, at the time of the declaration of bankruptcy, was not working and that the employees were staying therein to protest for the non-resumption of the activity and for dismissal of the whole personnel.

As far as the danger of "unforeseeable acts of perturbation of the public order", that the Mayor wanted to avoid by means of the requisition, are concerned, the events subsequent to the requisition have clearly demonstrated the inefficacy of the measure; this is proved by the fact that the parades and demonstrations of protest followed one another, creating also a situation of perturbation of the public order, until the situation was faced by responsible organs of the Government and, even through the inevitable obstacles unfortunately present in these cases, was drawn toward a solution.

We cannot refrain from stating that the order was issued — as it appears from the same order and as it has been observed by the appellant — also under the influence of the pressure created by, and of the remarks made by the local press; therefore we have to hold that the Mayor, also in order to get out of the above and to show the intent of the Public Administration to intervene in one way or another, issued the order of requisition as a measure mainly directed to emphasize his intent to face the problem in some way.

On the basis of the above-mentioned considerations, even though the assumption of the appellant relative to the presumed violation of Article 69 DLP No. 6 of 29 October 1955, indicated in section 3 of the appeal, has to be rejected, and having held that the appeal is founded and, consequently, is worthy of being granted;

ORDERS

that the appeal mentioned in the premises be granted.

The Mayor of Palermo is charged with enforcing this order.

The "Consigliere",
(*Signed*) (illegible).

The Prefect,
(*Signed by*) RAVALLI.

Annex 77

COUNCIL OF STATE OPINION REGARDING APPEAL BY MAYOR OF PALERMO, 19 NOVEMBER 1971

(Translation)

CONSIGLIO DI STATO

Meeting of the I Sezione — 19 November 1971.

24 November 1971, No. 1199.

Subject:

Extraordinary appeal introduced by the
Municipality of Palermo.

Having seen report No. 4926.15200.2.21 dated 21 July 1970, by which the Ministry of Interior-Directorate of Civil Administration has requested the opinion as concerns the two appeals introduced by the Mayor of Palermo in the capacity as Chief of the Municipal Administration and as Government Officer, respectively, against decree No. 22979 of 22 August 1969, issued by the Prefect of Palermo, granting the through-channel appeal introduced by S.p.A. "Raytheon ELSI" to obtain the annulment of the ordinance of requisition of the plant and relating equipment belonging to the aforesaid company, issued on 1 April 1968, by the Mayor of Palermo.

Having examined the documentation and having heard the reporter;

Deeming in fact:

That on 29 March 1969, the Board of Directors of S.p.A. Raytheon ELSI resolved to close its plant, located in Palermo, devoted to the production of electronic and television products, with the consequent dismissal of approximately 900 workers.

Following this decision the Mayor of the Municipality of Palermo — keeping into account the negative reflex consequences that the closing of this concern would have brought about in addition to the already precarious local economic situation, and following the agitations and manifestations of protest organized by the dismissed workers — by ordinance of 1 April 1968, ordered the requisition, for a period of six months, of the aforesaid plant and relating equipment.

By through-channel appeal dated 22 April 1968, the interested company, in the person of its Managing Director, appealed against the above-mentioned ordinance of requisition. Said complaint was accepted by the Prefect of Palermo who issued the contested provision No. 29979 of 22 August 1969, on the grounds indicated in the provision itself.

Against this decision the Mayor of Palermo introduced two appeals.

(A) By the first one, introduced by the Mayor in his capacity as Chief of the Municipal Administration, the following reason for complaint is alleged:

(1) Unlawfulness because of complete failure to state grounds as to unacceptability of the appeal and because of erroneous presumption of the right to sue the Municipality of Palermo.

According to the appellant, in fact, the Prefect would have omitted to keep into account — when examining the through-channel appeal introduced by Raytheon ELSI company — the objection of unacceptability of the complaint itself formulated by the Mayor by deed of 22 April 1968, according to which (objection of unacceptability), having the Mayor himself acted in the capacity as Government Officer, the appeal in question should have been declared unacceptable inasmuch as same was introduced against the Municipality of Palermo and not against the Mayor acting as Government Officer. Consequently, always according to the appellant, the complaint should have been notified to the Office of the District State Attorney.

(B) By the second appeal introduced by the Mayor in his capacity as Government Officer, is also introduced the following reason for complaint in addition to the complaint stated above:

(2) Illogical and obviously contradictory formulation of the (Prefect's) decision.

According to the appellant, these defects derive from the circumstance that the Prefect, after having affirmed the Mayor's competence to issue the order of requisition, and after having admitted the existence of a condition of public need as well as of necessity and urgency to intervene, has, nevertheless, accepted the appeal submitted by Raytheon ELSI Company in consideration of the fact that "the company had not resumed its activities after the requisition".

Furthermore, the appellant complains that the Prefect annulled the order issued by the Mayor for lack of a basis for the order, affirming, on the other hand, that the provisions adopted by the Mayor, by virtue of Article 7 of law No. 2248 of 20 March 1965, enclosure E, as well as by virtue of Article 69 of DLP No. 6, Sicilian Region, of 29 October 1955, was based on the very "urgent and not-postponable necessity of making the property available, to prevent impairment of the community's interests".

The Raytheon ELSI Company — which in the meanwhile had been declared bankrupt — through the agency of the Official Receiver, opposed the Mayor's actions on the grounds that the appeals in question "had not been drawn up, notified and deposited in the ways and terms required by the law".

Considering in point of law:

That the contested Prefect's decision, issued with respect to a through-channel appeal, is to be considered as a final deed, and that such a decision stemmed from his powers which were exercised in accordance with Article 7 of law No. 2248, enclosure E, of 1865 concerning administrative disputes and the principle affirmed by law No. 996 of 30 November 1950, both appeals under examination appear to be inadmissible.

By one of the two complaints the Mayor, in his declared capacity as Government Officer, has contested the decision of the Prefect annulling — on the basis of the through-channel appeal submitted by the interested company — the Mayor's ordinance to requisite the plant belonging to the company itself. The Mayor, however, in the capacity as Government Officer, is obviously not authorized to act against the decision of the higher authority, namely the Prefect, since he is an officer under the direct supervision of the Prefect himself. In fact, both the Mayor in the capacity as Government Officer, and the Prefect, are not two separate legal persons but, on the contrary, both of them are Government authorities, that is, belonging to the same governing body. Consequently, they do not pursue opposed interests but identical interests, even if evaluated from a different point of view and at different hierarchic levels.

Also the other appeal introduced by the Mayor in his alleged different capacity as Chief of the Municipal Administration must be considered unacceptable. In fact, it is not possible to admit that the Municipality may have an interest, juridically capable of being evaluated, in defending against the Prefect actions performed by the Mayor in the capacity as Government Officer.

The power to dispose of private property, under Article 7 of the above-mentioned law concerning Administrative disputes — on the basis of which the Mayor's decision was issued — refers to a power which can be lawfully exercised only by Government authorities; and among these authorities is also included the Mayor — being a Government authority — when he acts, subsidiarily, in lieu of the Prefect.

Both authorities, in the exercise of their power of issuing ordinances, enjoy a jurisdiction which does not involve the protection of particular interests of the Municipal Administration inasmuch as this exceptional and extraordinary power is to be intended as a means apt to meet a major public interest which, as may be recognized in the Mayor's ordinance under examination, may also extend beyond, the very limits of the municipal territory. This is a function that clearly differentiates itself from the sphere of activities and jurisdictions proper of the Municipal Administration, even if the Mayor, in both the above-mentioned capacities — which, however are subject to different regulations — is re-appointed and his appointment is approved by the civic representation. As regards this function, the Mayor must account for it only to the Government Administration without involving, in said function, the responsibility of the Municipal Administration. The latter, therefore, is not lawfully authorized to appeal, even in the case of asserted reasons of prestige, to defend the action of the Mayor, in the capacity as Government Officer, against the decision of the Prefect who has annulled said action through the exercise of a power of hierarchic supremacy — not to be mistaken with that concerning the control over deeds issued by local government agencies — which, however, refers to a matter falling under the primary jurisdiction of the higher authority and in which, as stated above, the Municipal Administration cannot interfere.

Decision No. 1130 of the 5th Section, dated 14 December 1957, mentioned by the Ministry of Interior, refers to a test case concerning the transfer of Government Officer's functions from the Mayor to a city councilman, and has nothing in common with this case.

FOR THIS REASON

Expresses the opinion that both appeals be declared unacceptable.

SUMMARIZED FROM THE RECORDS.

(Signed) (illegible).

Seen:
(Signed): (illegible).

Annex 78

RULING BY PRESIDENT OF ITALY DISMISSING APPEAL BY MAYOR OF PALERMO, DATED 22 APRIL 1972, REGISTERED 19 MAY 1972

(Translation)

Registered at the Court of Accounts,
May 19, 1972,
Internal Register 15, sheet 140.

THE PRESIDENT OF THE REPUBLIC

Having seen the extraordinary appeals directed to the Chief of the State by the Mayor of the Municipality of Palermo — in his capacity as Government Officer and as Chief of the Municipal Administration, respectively, against decree No. 29779 of 22 August 1969, issued by the Prefect of Palermo, granting the through-channel appeal submitted by S.p.A. Raytheon ELSI to obtain the annulment of the ordinance of requisition of the plant and relating equipment belonging to the aforesaid Company, issued on 1 April 1968, by the Mayor of Palermo;

Having seen the Consolidated Text of laws relating to the Council of State, approved by royal decree No. 1054 of 26 June 1924;

Having seen royal decree No. 444 of 21 April 1942, approving the regulations for the implementation of the laws relating to the Council of State;

Having heard the opinion expressed by the Council of State in the course of the meeting held on 19 November 1971, the text of which is attached to this decree and the considerations contained therein are here integrally reproduced;

On the proposal of the Minister Secretary of State for Internal Affairs;

DECREES:

The extraordinary appeals indicated in the foregoing are declared unacceptable.
The proposing Minister is charged with the implementation of this decree.

Rome, 22 April 1972.

(Signed) G. LEONE.
(Signed) M. RUMOR.

On the 16th day of the month of June of year 1900 seventy two in Palermo, I, the undersigned municipal public officer have served a copy of this to S.p.A. Raytheon ELSI at its domicile, Piazzale Ungheria 84, delivered in the hands of Miss Maria Parlovecchio, employed with lawyer Curator Giuseppe Siracusa.

The Municipal Public Officer,
(Signed) (illegible).

Annex 79

LAWSUIT FOR DAMAGES FILED BY THE TRUSTEE AGAINST THE MINISTER OF THE INTERIOR AND THE MAYOR OF PALERMO, DATED 16 JUNE 1970

(Translation)

TRIBUNAL OF PALERMO

SUMMONS AND COMPLAINT

The bankruptcy of S.p.A. Raytheon-ELSI, represented by its Trustee in Bankruptcy, Avv. Giuseppe Siracusa, domiciled for the purpose of these proceedings in Palermo, 4 Via Howel, at the office of Avv. Carmelo Lo Cascio, by whom it is represented and defended according to Decree of Authorization granted by the Judge in Charge, Dr. V. Badalamenti on 22 November 1969.

By this act served by the undersigned Service Clerk of the Services Office at the Court of Appeals of Palermo

SUMMONS

(1) The Minister of the Interior of the Republic of Italy in the person of the Hon. Franco Restivo, domiciled at the "Avvocatura Generale dello Stato" in Palermo, 114 Via Marchese di Villabianca (Vassallo Palace);

(2) The present Mayor of the City of Palermo, in the person of Dr. Francesco Spagnolo, domiciled in Palermo, Piazza Pretoria, Palace of Eagles [Palazzo delle Aquile];

TO APPEAR

before the Civil Tribunal of Palermo, in the premises where it meets, at Piazza V. E. Orlando — Palace of Justice — at the hearing which will be held on 27 January 1969, at 9.00 a.m., by the Investigating Judge to be appointed and invites them to appear as defendants according to the terms and conditions set forth by the law in order to hear the following claims.

WHEREAS

by act of 1 April 1968, served on the subsequent 2 April, the Mayor of the City of Palermo, invoking Article 7 of Attachment "E" of Law No. 2248 of 20 March 1865, and Article 69 of DLP n. 6 of 21 October 1955, on the Administrative Organization of the Local Entities of the Region of Sicily, ordered the requisition of the plant, machinery and equipment which form the electronic unit of Raytheon-ELSI S.p.A., located in Palermo, at 79 Via Villagrazia, for a period of six months subject to be extended.

Raytheon-ELSI S.p.A. represented by its Managing Director, Mr. Justin J. Guidi, on 19 April 1968, appealed the above-mentioned order of requisition before the Prefect of Palermo, requesting that the order, after being suspended, be nullified with all the consequences of law.

In consideration of the heavy legal and economic situation created by the appealed order of requisition, Raytheon-ELSI S.p.A. was obliged to file for bankruptcy, which was declared by decision of this Tribunal on 7-16 May 1968.

Even after the declaration of bankruptcy the Trustee in Bankruptcy, Avv. Siracusa, could not take possession of the plant and relative equipment due to the order of requisition issued by the Mayor of the City of Palermo, which remained in effect through 30 September 1968, causing unimaginable damages for the bankrupt company and, therefore, for the creditors.

In the meantime, since the Prefect of Palermo was late in deciding on the Appeal made by the bankrupt Raytheon-ELSI, the Trustee in Bankruptcy, on 9 July 1969, gave warning to the Prefect of Palermo, in accordance with Article 5 of TU n. 384 of 3 March 1934, of the Communal and Provincial Law and subsequent modifications, to take a decision on the above-mentioned appeal within 60 days from the day the warning was served.

The Prefect of the Province of Palermo, by Decree n. 29779 of 22 August 1969, served on 18 September 1969, granting the appeal, declared illegal the order of requisition of the Mayor of the City of Palermo of 1 April 1968.

Such Decree of the Prefect has not been appealed by any of the parties and, therefore, it is now irrevocable.

On 22 November 1969, the Judge in Charge, Dr. Vincenzo Badalmenti, having authorized the present proceedings, the plaintiff, Avv. Giuseppe Siracusa, in his above-mentioned capacity, asks that the defendants be condemned to pay damages to the bankrupt estate of Raytheon-ELSI due to the illegal occupation of the industrial plant and relative equipment owned by the bankrupt company.

Such damages can be identified as the considerable decrease in value of the plant and the electronic equipment existing in Palermo at 79 Via Villagrazia, which results from the difference between the book value at the date of the bankruptcy of Raytheon-ELSI, of Lire 6,623,000,000 and the evaluation made on 11 October 1968 (that is, immediately after the six-month period of requisition had elapsed) by the Court Appraiser, Professor Mario Puglisi, appointed by the Judge by Decree of 19 September 1968 of Lire 4,560,588,400, with a real loss of value of Lire 2,062,411,600 and as the lack of disposability of the plant and relative equipment for six months which, on the basis of the amortization rate for the industrial plants, equal to 10 per cent per year, can be determined in Lire 33,150,000, and, therefore, in the aggregate amount of Lire 2,395,561,600, plus the interests at the legal rate from 1 October 1968, to the payment.

Now therefore it is asked that

THE TRIBUNAL

reject any contrary demand or defense, condemn the Minister of the Interior of the Republic of Italy, the Hon. Franco Restivo, and the Mayor of the City of Palermo, Dr. Francesco Spagnolo, to pay to the bankrupt estate of Raytheon-ELSI, in the person of its Trustee in Bankruptcy, Avv. Giuseppe Siracusa, damages for the illegal requisition of the plant machinery and equipment which form the electronic unit of Raytheon-ELSI S.p.A. in Palermo, at 79 Via Villagrazia, for the period from 1 April to 30 September 1968, in the aggregate amount of Lire 2,395,561,600 plus interests at the legal rate from 1 October 1968, to the date of payment.

If necessary, dispose an appraisal for the evaluation and for the determination of the claimed damages.

Condemn the defendants to the payment of expenses and fees for these proceedings.

Grant the immediate enforcement of the decision, without prejudice to any other right.

(Signed by) Avv. Carmelo Lo Cascio.

I hereby appoint Avv. Carmelo Lo Cascio to represent and defend me in these proceedings in accordance with the Decree of Authorization granted by Judge Dr. Vincenzo Badalamenti, on 22 November 1969.

(Signed by) Avv. Giuseppe Siracusa, Trustee in Bankruptcy.

The above signature is true.

(Signed by) Avv. Carmelo Lo Cascio.

Together with this act the following documents will be exhibited:

Copy of the Order of Requisition issued by the Mayor of the City of Palermo on 1 April 1969;
Copy of the Warning dated 9 July 1968, served to the Prefect of Palermo;
Copy of the Decree of Revocation n. 29779 of the Prefect of Palermo, dated 22 August 1969, served on 18 September 1969;
Copy of the Decree of Authorization to these proceedings by Judge Badalamenti dated 22 November 1969.

(Signed by) Avv. Carmelo Lo Cascio.

This a true copy of the Original which is attached to the official file of the Tribunal of Palermo n. 7197/69 RG — Palermo, 16 June 1970.

The Clerk
(Signed) Illegible.

Annex 80

JUDGMENT OF THE COURT OF PALERMO, DECIDED 2 FEBRUARY 1973, FILED 29 MARCH 1973, REGISTERED 4 APRIL 1973

(Translation)

LS NO. 118969
BL
Italian.

THE REPUBLIC OF ITALY

IN THE NAME OF THE ITALIAN PEOPLE,

The Court of Palermo, First Civil Division, consisting of:

(1) Dr. Antonino Marino	Presiding Judge,
(2) Dr. Vincenzo Palmegiano	Associate Judge,
(3) Dr. Pasquale Barreca	Associate Judge,

meeting in chambers, has issued the following

DECISION

in the Civil Case No. 7197/69

Between

S.P.A. RAYTHEON-ELSI, in the person of its trustee in bankruptcy Attorney Giuseppe Siracusa, represented and defended by Attorney Carmelo Lo Cascio — Plaintiff

and

THE MINISTRY OF THE INTERIOR, represented and defended by the Government Legal Adviser's Office — Defendant,

THE MAYOR OF THE CITY OF PALERMO, represented and defended by Attorney Angelo Perna — Defendant.

Plaintiff's summation:

MAY IT PLEASE THE COURT

disregarding any contrary motion and defense,
to sentence the Ministry of the Interior of the Republic of Italy in the person of the Hon. Francesco Restivo and the Mayor of the City of Palermo in the person of Dr. Francesco Spagnolo to compensation for damages in favor of the bankrupt estate of the Raytheon-ELSI company in the person of its trustee in bankruptcy, Attorney Giuseppe Siracusa, arising from the unlawful appropriation of the plant, installation, and equipment which constituted the Raytheon-ELSI electronic complex situated in Palermo in Via Villagrazia 79 for the period from 1 April 1968, to 30 September 1968, in the amount of L.2,395,561,600, plus legitimate interest from 1 October 1968, to date.

If necessary, to call for technical consultation for the evaluation and determination of the damages claimed, and to sentence the defendants to pay the court costs.

Government Legal Adviser's summation:

MAY IT PLEASE THE COURT

to reject all claims put forward by the plaintiff, sentencing him to bear the costs for this proceeding and reject all other claims from whatever side, against the Ministry as well as any deductions advanced against its arguments.

Attorney Angelo Perna's summation:

MAY IT PLEASE THE COURT

to reject any opposing motion, objection, and defense.

To preliminarily declare the incapability of being sued of the City of Palermo, which extends to the Mayor in his double capacity of head of the city administration and government official, and declaring him excluded from this proceeding;

to declare, also preliminarily, the summons to be irremediably null and void with regard to the relations between the plantiff and the Mayor of Palermo in his capacity as a government official.

Secondarily, to absolve the City of Palermo or the Mayor of Palermo in his capacity as a government official from the plaintiff's claims because they are inadmissible, unacceptable, unfounded, and reckless. To sentence the administration of the bankrupt Raytheon-ELSI estate to pay the costs, fees, and charges of this proceeding.

Upon deliberation, the Court observes:

COURSE OF THE PROCEEDING

By summons served on 20 October 1969, the trustee in bankruptcy of the Raytheon-ELSI company brought the Ministry of the Interior and the City Administration of Palermo in the persons of the respective minister and the Mayor of Palermo before this court, charging:

(1) that on 1 April 1968, the Mayor of Palermo issued an order in accordance with Articles 7 of Law No. 2248 of 20 March 1965, Annex E, and 69 of Decree Law Pres. Reg. No. 6 of 21 October 1955, to take over the Raytheon-ELSI plant in Palermo for the duration of six months, and that in the course of the time required for the appeal to the Prefect, the company, due to the grave economic situation occasioned by the above-mentioned takeover, had to declare bankruptcy on 7-16 May 1968; (2) that during the takeover, the trustee was not even able to take possession of the plant and equipment due to the protracted effects of the Mayor's order until 30 September 1968; (3) that on 22 August 1969, the Prefect issued a decree declaring the above-mentioned order unlawful; (4) that the damage centres on the difference between the evaluation of the worth of the plant and equipment as listed in the balance on the date of bankruptcy at Lire 6,623,000,000, and the estimate of Lire 4,560,588,400 given by the technical adviser appointed by the court, thus showing a loss of Lire 2,062,411,600, as well as on the inability to dispose over the plant and the respective equipment valued at Lire 333,150,000 for six months, and asked the court on the basis of all this

to sentence the above-mentioned defendants to pay the plaintiff a total of Lire 2,395,561,000 plus legitimate interest from 1 October 1968.

In rebuttal, the City Administration claimed that it was exempt from being sued since the order was issued by the Mayor as a government official, and both administrations based their claim that the charge is unfounded on this argument and demanded that it be rejected. Documentation produced by the parties in support of their respective charges and defenses at the hearing of 26 January 1973, was accepted and the arguments were closed, with the representatives of both parties insisting on the conclusions described earlier.

MOTIVES

First of all, the court makes it clear that the Mayor of the City of Palermo lacks the capacity of being sued. In this respect, it must be explained that this official was brought into court as head . . . [translator's note: part of this sentence seems to be missing in the Italian text] . . . clear that the takeover order was issued by him in his capacity as a government official.

The motivation adopted is the surest demonstration of this and is really based on the fact, which is not shown up in the introduction to this decision, that the Raytheon-ELSI company had decided to end its production activities from March 1968. Therefore, as is after all well known, since at the time, the fact also gave rise to a series of press reports, expressions of public opinion and pronouncements by politicians, the order was based on the consideration that the cessation of production was going to expose the roughly 1,000 workers of the company to a rough period of unemployment, which might even have serious repercussions on public order itself. And in fact, acknowledging the "vast and general movement of solidarity of the entire public opinion which has violently criticised the plans in view of the fact that about a thousand families might suddenly find themselves out in the street because of them", the Mayor declared that "the situation itself was particularly alarming and sensitive so that unforeseeable disturbances of the public order could not be excluded", and he therefore concluded that in the case at hand "the conditions of grave public necessity and the urgency of safeguarding both the general public economic interest (already seriously compromised and the public order . . .".

Under these conditions one can easily perceive the order in question to be of the very nature of the "possible and urgent" measures undertaken, among other things, by "local police forces" . . . for "motives of public safety", in accordance with Article No. 69 of Decree Law Pres. Reg. No. 6 of 21 October 1955, which is in fact being quoted and which corresponds to Article 153 of the consolidation act of 1915. Such measures of the prevalent doctrinal and jurisprudential currents are part of the powers of the Mayor as a government official and not as head of the city administration.

Thus, the Mayor in issuing the orders mentioned in Article 69 of Decree Law Pres. Reg. No. 6 of 21 October 1955, acts as a functionary of the civil administration of the Interior, of whose hierarchy he is a part, so that, as has been established for the responsibility of the organs which are part of the direct administration of the State, the responsibility for the acts of the Mayor in the execution of his functions as a government official must be placed at the summit of the above-mentioned State administration, that is, the Minister of the Interior (see Cass. Sez. Un., 14 June 1967, No. 1329, Cass. 5 January 1966).

Nor is it appropriate to quote, as the plaintiff does, the decision No. 1676 of 7 July 1967, of the United Sections concerning a different kind of case which is not analogous to the case in hand, in which the question is that of a proven connection with the formative spirit of the "impossible and urgent" *[sic]* measures of Article 69 of the Presidential Decree quoted several times above.

While the lack of passive legitimation of the Mayor of the City of Palermo means that the claims against him must be rejected, it focuses the question of the merit of the case on the other defendant administration.

The assertions developed by the plaintiff in that respect are substantially founded on the following arguments: *(a)* that the takeover order caused an economic situation of such gravity that it immediately and directly triggered the bankruptcy of the company; *(b)* that the damage suffered consists of the difference between the evaluation of the land, plant, and general equipment listed in the balance and the estimate made by the consultant appointed by the court, as well as in the lack of control over the plant for the duration of the takeover; *(c)* that the established illegality of the Mayor's order is clear proof of the fact that the takeover was the cause of the damage suffered by the company.

Now, regarding the argumentation under *(c)*, it has been clearly pointed out by the defendant administration that the prefect's order is basically a recall of the Mayor's previous order on the grounds that the objectives pursued by the latter have been found to be unrealizable, since the conditions for a valid and efficacious resumption of production, the cessation of which was considered and carried out by the competent social organ due to the extremely serious situation the company was in and was confirmed by the actual stop of production. That this happened in the manner described above is evident from the documents produced by the defendant administration, concerning in particular the very events which led to the cessation of the above-mentioned activity because of the extremely serious economic situation which had been caused by the unfavorable market conditions and other reasons.

It is useful in this connection to recall a number of salient facts drawn from the above-mentioned documentation and which are not contested by the plaintiff. First of all, it must be noted that one can see from the cable traffic between the Prefecture of Palermo and some central, national, and regional authorities which were following the developments of the situation of the plant with a view to the repercussions it had on the many workers, the regional economy, and, an important circumstance, even on the public order: (1) that on 15 March 1968, the above-mentioned office communicated to these authorities that the administrative board of the company was about to decide to stop production at the plant, laying off 800 workers, of whom a group of 175 had been on strike since 13 March and had occupied plant property; (2) that on 18 March the Prefecture had reported that the closing down of the plant had been decided on and that all activities would cease on 29 March.

There is also a document dated 2 July 1969, sent by the trustee in bankruptcy to the Prefect requesting that the appeal of the Mayor's order in question be considered, stating that

> "in spite of the immense capital and modern equipment of the plant, the Raytheon-ELSI company has encountered serious difficulties in the pursuit of its commercial activities, for which reason its shareholders had been called upon several times to pay 'billions' in order to prevent the plant from having to be shut down. In spite of such considerable support, the situation continued to deteriorate further, so that the Raytheon-ELSI company was forced on 31 March 1968, to close the plant and lay off the workers".

The clarity of these expressions and communications leaves nothing to be desired. On 31 March 1968, the ELSI plant was for all practical purposes no longer in operation, closed down in accordance with a decision of the competent social organ which had not even considered it necessary, probably due to the resistance encountered from the workforce, to reduce production and personnel, but instead had decided, in the absence of any other solution, to go for the most drastic solution, evidently considering it most conducive to the interests of the company, a solution which meant the total shutdown of production. This, in spite of the immense financial support from the shareholders, caused a gigantic increase in the company's indebtedness as it appears from the prospectus of 31 March 1968 (called preliminary balance), which was submitted to the Bankruptcy Division, and where the indebtedness is listed as Lire 2,683,500,000 for the preceding financial year, and as Lire 1,068,000,000 for the current financial year (31 March 1968).

To this must be added, as is well known in view of the great resonance this company's affairs found even on the national level, that in the early part of 1968, there was a notable deterioration of the general situation of the company, which was further aggravated by unfavorable market conditions as well as the January earthquakes and a series of strikes which in March were sometimes continuous and sometimes intermittent, causing the loss of a considerable amount of production hours.

The cessation of activities was, by the way, preceded by the closing down of some special departments, which is a clear sign of trouble. This was the state of events at the plant at the time the Mayor's order was issued on 1 April 1968.

It is clear from these conditions that the connection between the company's bankruptcy and the takeover is unfounded, as the defendant administration correctly maintained, since Raytheon-ELSI's economic situation had already been seriously compromised, as its own management explicitly admitted.

Nor can the plaintiff claim that the damage is evidenced by the difference between the evaluation given in the balance of the land, buildings, installations, equipment, furniture, and other furnishings, at a total of Lire 6,622,800,000, and the estimate given on 11 October 1968, a few days after the end of the takeover, by the expert appointed by the judge, or arose from the lack of access to the plant for the above-mentioned period, since it has been established: (1) that the precise definitions above show that the bankruptcy was due to other, much more relevant causes and not to the takeover which had no such effect; (2) that the evaluation listed in the balance on the credit side, which is very important for the installations, various equipment, furniture, and machinery (more than five and a half billion), concerns the indication of values whose correspondence to reality is relative, so much so that the items relative to funds of amortization and renovation (Art. 2424 of the Civil Code) are entered on the debit side, in view of the expected progressive loss of value of the installations in general (and of everything connected with them) and of the necessity of replacing some of them; (3) that it has not been proven that any damage is connected with the lack of access to the plant, which was moreover a limited period of time, since the trusteeship was established even before 30 September 1968, as evidenced by the activities performed by the consultant appointed by the court. During his summation to the court, the plaintiff alluded to damage caused by workers who occupied the plant, by negligent custody or other factors. These are facts that were reported in the complaint itself, and which moreover are not corroborated by the above-mentioned consultant's report which, in its evaluation of the plant, would certainly have pointed out and mentioned the existence of such damage.

The suit is therefore rejected.

The plaintiff is consequently sentenced to pay the cost of these proceedings to the defendants. These costs consist of Lire 1,715,800 to be paid to the Mayor of

Palermo, including Lire 1,500,000 for defense counsel, and 200,000 for *competenze di procuratore*, and of Lire 1,792,000 to be paid to the civil administration of the Interior, consisting of Lire 1,600,000 for lawyers fees, and Lire 192,000 for *diritti di procuratore*.

THEREFORE

the Court, after hearing the representatives of the parties:

(1) rejects the suit; (2) sentences the plaintiff to pay the costs for the proceeding to the defendants in the amount of a total of Lire 1,715,500 to the Mayor of the City of Palermo, and Lire 1,792,000 to the civil administration of the Interior.

Thus has been decided by the First Division of the Court on 2 February 1973.

(Signed) Antonino **Marino**. *(Signed)* Vincenzo **Palmegiano** est.

(Signed) Pasquale **Barresca**.

The Chancellor,
(Signed) **Merendino**.

Filed with the Court Clerk in Palermo today, 29 March 1973.
The Chancellor *(Signed)* Merendino.
Registered in Palermo on 4 April 1973.
No. 2449 *registro Nod. 71 M* Exactly lire nine thousand four hundred.

Attorney **Perna**.
(Signed) Cashier **Tortorici**.

The Director,
(Signed) **D'Orso**.

Annex 81

JUDGMENT OF THE COURT OF APPEALS OF PALERMO, REGISTERED 24 JANUARY 1974

(Translation)

THE REPUBLIC OF ITALY

IN THE NAME OF THE ITALIAN PEOPLE

The Court of Appeals of Palermo, First Civil Division consisting of:

(1) Dr. Giovanni Piccione	Presiding Judge,
(2) Dr. Salvatore	Associate Judge,
(3) Dr. Vincenzo Faraci	Associate Judge,
(4) Dr. Francesco Romano	Associate Judge,
(5) Dr. Gaetano Lo Coco	Assistant Judge,

meeting in Chambers, has issued the following

DECISION

in Civil Case No. 510 as per the Official Register for the Year 1973 on the basis of the court hearing of 16 November 1973.

Between

S.p.A. Raytheon-ELSI, in the person of its Attorney, Giuseppe Siracusa, domiciled in Palermo and specifically (illegible) in the Law Offices of Carmelo Lo Cascio (illegible), whose representative and defense Attorney he is under the provisions of the writ of authorization (illegible) issued by Judge Dr. S. Migliore on 3 May 1973 — Appellant

and

THE MINISTRY OF THE INTERIOR, represented by the Acting Minister, the Honorable Mariano Rumor, with domicile of choice at the Office of the State's Attorney of Palermo, 114 Marchese di Villabianca Street — Appellee

and

The Acting Mayor of the City of Palermo, Col. Giacomo Marchello, with domicile of choice in Palermo, Piazza Pretoria Palazzo delle Aquile, represented and defended by Attorney Angelo Perna (illegible) as per general power of attorney (illegible), 11 November 1965 (illegible).

SUMMATIONS BY THE ATTORNEYS OF THE PARTIES

Attorney Carmelo Lo Cascio, for the appellant, petitioned:

MAY IT PLEASE THE COURT OF APPEALS

to disregard any contrary instance and defense, to grant this appeal against the decision handed down by the Court of Palermo on 2 February, 29 March (illegible) 1973, communicated on 18 April 1973, and revoke and cancel this decision in all of its points. Consequently, sentence jointly and severally the Acting Minister of the Interior of the Italian Republic and the Acting Mayor of the City of Palermo to the compensation of damages in favor of S.p.A. Raytheon-ELSI, in the person of its Trustee in Bankruptcy Attorney Giuseppe Siracusa, by virtue of the unlawful requisitioning of the establishment, plant, and equipment constituting the electronic complex called Raytheon-ELSI S.p.A., at 79 Villafranca Street, Palermo, for the period from 1 April 1968 on, in the total amount of 2,395,561,600 Lire, plus legal interest, from 1 October 1968, or by way of compliance.

May it please the Court to call for a technical consultation, based on timely market surveys, to assess and determine the damages both with regard to the major decline in asset value suffered by the Raytheon-ELSI establishment as a direct consequence of the requisitioning order issued by the Mayor of Palermo on 1 April 1968, and with regard to the equitable indemnification due to the state in bankruptcy of Raytheon-ELSI for the full duration of said unlawful requisition (from 1 March until 30 September 1968) of the entire factory complex called Raytheon-ELSI Electronic Establishment, at 79 Villafranca Street, Palermo.

To sentence the Appellees to payment of double the court costs and compensations.

Without prejudice to any other rights

Attorney Matteo Ferrante, for the Appellee, the Ministry of the Interior, petitioned:

MAY IT PLEASE THE COURT OF APPEALS

to reject any instance to the contrary, exception, or defence, and reject the appeal filed in connection with the bankruptcy of Raytheon-ELSI, Inc., sentencing the latter to court costs and expenses.

Attorney Angelo Perna, for the Appellee, the Mayor of Palermo, summed up his case:

MAY IT PLEASE THE COURT

Reiectis adversis (in rejecting opposition arguments) to reject the appeal and to sentence the appellant to maximum payment of court costs, charges, and fees connected with this case.

COURSE OF THE PROCEEDING

On the basis of a summons served on 20 December 1969, and renewed on 28 January 1970, the trustee in bankruptcy of the Raytheon-ELSI Company brought the Minister of the Interior of the Republic and the Mayor of Palermo before the Court of Palermo. He charged:

1. That by Act of the Mayor, issued effective 1 April 1968, Annex E, and Article 69, Presidential Decree Law No. 6, dated 21 October 1955, the requisition of the establishment, plants, and equipment of said Company was ordered for a period of six months and that, due to the delay of the administrative appeal procedure proposed to the Prefect on 19 April 1968, the Company — on account of the grave economic and legal situation caused by said requisition — was forced to petition for bankruptcy which was declared via the ruling of 7-16 May 1968.
2. That the trustee in bankruptcy was not even able to take possession of the establishment and its equipment because of this Order which remained in effect until 30 September 1968.

3. That the Prefect, after having been put on notice in accordance with the Act of 9 July 1969, under the provisions of Article 5, of Consolidation Act No. 383, dated 3 March 1934, by Decreee No. 29779, had declared the Mayor's Order to be unlawful.

4. That the unlawful requisitioning order and the unlawful takeover of the industrial establishment and the pertinent plants had caused damages which led to a reduction of the value of the establishment and the facilities as shown in the balance sheet for the date of bankruptcy in the amount of 6,623,000,000 Lire, while the estimate made on 11 October 1968, by the technical consultant appointed by the Official Receiver, came up with a figure of 4,560,588,400 Lire, hence with a loss of 2,062,411,600 Lire, as well as the fact that the establishment and the pertinent equipment were unavailable for six months, to be estimated at a figure of 333,150,000 Lire on the basis of an industrial plant amortization rate of 10 per cent per year. In the light of the above, he petitioned that the Court sentence said defendants to indemnify the trusteeship in bankruptcy for the damages in the total amount of 2,395,561,600 Lire, plus legal interest as of 1 October 1968, as well as to payment of the trial costs.

In his testimony, the Mayor of Palermo argued that he himself was legally not liable since he had acted as a government official; he then noted that the petition was groundless and asked that it be turned down. The Ministry of the Interior argued along the same lines in its summation.

After having obtained the documentation produced by the parties in support of their petitions and defenses, the Court addressed itself to handing down a ruling in this case, and through its Decision of 2 February-29 March 1973, the Court rejected the petition of the Plaintiff and sentenced both the Mayor of Palermo and the Civil Administration of the Ministry of the Interior to pay the trial costs.

The judges noted above all that the Mayor could not be sued because he was cited as head of the communal administration, while the requisitioning order had been issued by him as officer of the Government, that is, in the context of the Administration of the Internal (Affairs) of the State. Examining next the position of said Administration with respect to Plaintiff's petition, they stated first of all that the Prefect's decision as to the Company's administrative recourse was aimed at revoking rather than annulling the Mayor's requisitioning order; in the light of the results of these facts and also by virtue of the notoriety of these events, they remarked then that there were considerable repercussions at that time also in the national and local press so that one could entirely rule out the causality link — suggested by the Plaintiff — between the Mayor's order and the Company's bankruptcy which had its explanations in the rather precarious economic conditions of the Company itself — conditions which, even before the Mayor's order, had been manifested rather clamorously; that, in any case, the figures shown in the balance sheet could not be taken as basis for a determination of the damages; that, finally, it had not been proven that there were any damages due to the lack of access to the establishment.

The trustee in bankruptcy appealed this sentence to this Court through a petition forwarded to the Minister of the Interior and to the Mayor of Palermo on 9 May 1973, in which he above all deplored the fact that the Mayor was considered not to be capable of being sued, whereas it should have been recognized that he was indeed responsible for the unlawful requisition (first motive); he then reproposed the argument relating to the link between the requisitioning order and the bankruptcy declaration which had been caused by it; this in turn brought about the damage cited in the first instance which consisted in the difference of the value of the plant and equipment at the beginning and at the end of the six-month requisitioning period, as well as the fact that the Company did not have possession of the establishment during that same period of time, that the Court was in error when it considered this to be an event that did not cause any damages (second motive); he then insisted on the award of legal interest as of 1 October 1968, on the sums requested by way of damage indemnification (third motive); he finally complained about the provision calling for payment of costs which should instead have been charged to the Defendant Administration (fourth motive). In conclusion, he asked that the petitions formulated in the first instance be approved.

Both the Mayor and the Ministry of the Interior appeared in these proceedings. The former maintained that, since the order had been issued by him in his capacity as government official, he has no passive legitimation as head of the communal administration. The Ministry in its turn, repeated the illustration of the situation of extreme economic difficulty in which the Company found itself on the eve of the order, noting that the latter had no effect on the state of insolvency, which had manifested itself already earlier, and on the subsequent bankruptcy of the Company; it then noted that the requisitioning order was not declared unlawful but merely "*inutilitor datum*" (uselessly issued) in the sense that it was not suitable for resolving the serious economic difficulties in which the Company found itself; he finally claimed once again that no unfair damage could be linked to the requisition, concluding that the appeal be rejected and that the appellant be sentenced to payment of costs.

The summations of the parties were stated in the terms reproduced above and the case was taken up during the hearing of 16 November 1973.

MOTIVES BEHIND DECISION

The first motive of the appeal is without foundation; it censures the rejection of the petitions proposed with regard to the Mayor of Palermo who, according to appellant, was to be held responsible jointly and severally with the Minister of the Interior for the damages suffered by the Company.

The Court amply motivated its own conviction regarding the lack of passive legitimation of the Mayor of Palermo, demonstrating on the basis of the provisions of the law applied for the issue of the requisitioning order (Article 69, Ordinance of the Local Entities of the Sicilian Region, corresponding to Article 153, of the consolidated text of the communal laws and Order No. 148, dated 4 February 1915) and of its intrinsic content (grave necessity or urgency in the matter of public safety) that the Mayor acted in his capacity as government official, that is, as an organ of the administration of the internal (Affairs) of the State and not as head of the communal administration, drawing the conclusion that only the administration of the State — and not the communal administration — had to answer for its conduct.

Since the appellant did not present any substantial line of argument to counter the Court's motivation on that point, the Court can only state that said motivation is in line with legislative regulations in this matter and with the teachings of the Supreme Court, adding that further confirmation of this adherence to leglisative procedure is to be found in the 23 April 1972 decision of the President of the Republic (which therefore was introduced during the trial in the first instance) regarding the extraordinary remedies presented by the Mayor of Palermo against the decree of the Prefect of Palermo, dated 22 August 1969, Number 22979, which upheld the Company's administrative appeal procedure. The President of the Republic indeed declared such remedies to be unacceptable, as relates to the first remedy presented by the Mayor in his capacity as government official and the other as head of the communal administration, noting that the Mayor, in his capacity as government official, and the Prefect do not represent two different subjects under the law but instead are both organs of the State, that is, of the same entity, moreover in order of chain of command, which is why one could not challenge the actions of the other, and that, as for the other remedy, one could not perceive a juridically evaluable interest on the part of the Community to defend — against the Prefect — the actions of the Mayor as government official; it added that the power to dispose of private property as per Article 7, Law No. 2248, dated 20 March 1865, Annex E (expressly restated in the requisitioning order, in addition to Article 69 of the above-mentioned Ordinance), relates to a power that can be legitimately exercised only by the authorities of the State and that those authorities also include the Mayor as a governing authority, in a subsidiary manner, when he acts in lieu of the Prefect.

Regarding this first motive, reference must also be made to the decision of the Combined Divisions of the Supreme Court, of 7 July 1967, Number 1676, which the appealing Company again cited in support of its own thesis, in spite of the fact that the examination of said thesis in the first instance turned out to have been negative. One cannot in any way whatsoever repeat that this decision "concerns a different case at issue, without any analogy to the case under examination", as the Court asserts, because it deals with an order for the emergency takeover of a privately owned building, issued by the Mayor under the provisions of Article 7, Law No. 2248, dated 20 March 1865, Annex E, that is, an order substantially similar to the order involved in this trial.

It must be said, instead, on the one hand, that the Supreme Court in this ruling repeats the affirmation — stressed several times in the past — that these orders (both those based on Article 7, Law No. 2248, dated 1865, Annex E, and those under the provisions of Article 153, Consolidated Text, No. 148, dated 1915) are issued by the Mayor, in his capacity as government official, and that going through administrative channels via the Prefect is accepted as remedy against such orders (nevertheless concluding as to the passive legitimation of the City or State with regard to the petition for payment of damages; and, on the other hand, that the question concerning the legitimation of the State or of the Community is not examined here, either because it was not proposed in these terms (perhaps because the communal administration was the indirect beneficiary of the takeover order), but rather from the angle of a demand to extend the confrontation between parties to the Prefect. This decision therefore cannot count as precedent contrary to the frequently asserted principle in connection with a specific, in-depth examination of the issue at stake in this case, according to which damages that can accrue to third parties — in relation to the orders issued by the Mayor in his capacity as government official — must be charged to the State and not to the Community (Court of Cassation (Highest Appeals Court), 14 June 1967, No. 1329, in particular; Court of Cassation, 5 January 1966, No. 92; Court of Cassation, 4 May 1964, No. 1061; Court of Cassation, 11 August 1962, No. 2563; Court of Cassation, 7 June 1959, No. 1718, etc.).

The Court's decision to reject the petition with regard to the Mayor of Palermo must thus be upheld, leading to the appellant's being sentenced to payment of costs in favor of said appellee.

As regards the Ministry of the Interior — whose passive legitimation was not the subject of dispute and was furthermore affirmed by the Court in a ruling in favor of this party which was not challenged — one must above all clarify the possible misunderstanding that can spring from the fact that the Court affirmed that the Prefect's decree "substantially revokes the Mayor's Act, since the purposes it was aimed at were considered to be impossible to attain . . ." in juxtaposition to the thesis of the trustee in bankruptcy who saw in this decree a declaration as to the unlawfulness of the requisitioning order.

That in the thinking of the original judges this involves a merely verbal question, without any substantial significance, is demonstrated by the simple fact that the Court also moved on to examine the problem of the concrete existence of the damages claimed by the Plaintiff as having been caused by the order, whereas — if this had involved a true and proper revocation of the (lawful) requisitioning order — one could not speak of damages but, on the contrary, of the fact that indemnity was due for the period during which it brought its effects to bear; it is thus evident that one cannot attribute a revocation content to the Prefect's decree, above all because the power to revoke rests with the same authority that issued the order to be revoked, which is why only the Mayor, but not also the Prefect, could revoke the requisition ordered by the former and not by the latter, or, in the second place, because it would have made no sense to revoke — by means of the Prefect's decree of 22 August 1969 — a requisition order which had already ceased to be in effect on 30 September 1968. In the absence of an express provision in the Prefect's decree, which was confined to ordering that "the remedy appealing the decision is hereby accepted", the Court only wanted to say — in talking about revocation — that the defects in the requisitioning order, as disclosed by the Prefect, are defects of merit and not defects of legitimacy; but it did not take up the point that becomes relevant here, that is to say, that the Prefect's decree works *ex tunc* [as of then] and not *ex nunc* [as of now] and hence deprives the takeover of the assets of the appealing Company, as performed by the administration, of any justification, which is why, in any case, there arises the problem of the damages that the Company may have suffered as a result. This is why it would not even be necessary — except for the sake of completeness — to add that for the sake of accuracy, even in juridical terms, the Court's affirmation was wrong because it is quite evident that — when the Prefect pointed out that ". . . the ultimate goal of the requisition could not have been attained in practice through the order itself" and that ". . . the order generically lacks the juridical cause that could justify it or render it operative" as was then amply demonstrated, concluding with the severe finding that ". . . the Mayor . . . resorted to requisition as a step aimed more than anything else at bringing out his intention to tackle the problem just the same" — he is obviously showing a typical case of excess of power which, as we know, is a defect of legitimacy on the part of the administrative act (Art. 26, consolidated text, Council of State, approved by Royal Decree No. 1054, dated 26 June 1924 (illegible)).

Moving on to an examination of whether the reported damages still exist, I must say right away that, as regards the damages consisting in the fact that the order triggered the Company's bankruptcy, the negative conclusion arrived at by the Court is amply and convincingly motivated and (I must say) that the critical considerations of the appellant are not sufficient so as to lead to a different determination; in any case, as the Court pointed out, there is no proof whatsoever as to the damages incurred from that viewpoint.

The fact that the Company was insolvent during the time immediately prior to the Mayor's intervention — in connection with which we recall the many and noisy demonstrations which this gave rise to, as we are reminded by the Court — is sufficient to rule out any causal link between the subsequent requisitioning order and the Company's bankruptcy and that the Company's state of insolvency was decisive and sufficient cause for its failure (Art. 5, Bankruptcy Law).

In deciding this case, the appellant's line of argument is not sufficient to deprive this prior insolvency of the Company of its juridical relevance; according to that line of argument, the stockholders of Raytheon-ELSI, having made good for the losses of prior years would also take action to bring about an orderly and favorable liquidation of the Company, thus forestalling bankruptcy, which instead had become necessary as a result of the takeover order by the Mayor. The Court has no difficulty in considering it probable that the bankruptcy was requested by the Company itself with the intention of getting out of the very serious situation of operational unavailability created by the takeover; but, apart from the other questions of proof — not supplied, by the way — which would arise in this connection, it seems clear, on the one hand, that this does not eliminate the decisive effect of the state of insolvency, because, apart from everything else, relevant proof on this point should have been aimed not at the mere factual possibility of this action by other persons in support of the solvency of Raytheon-ELSI but rather the juridical possibility in the sense that there was a juridical relationship between said third parties and the Raytheon-ELSI Company so as to give the latter the right to demand their intervention.

Apart from these decisive considerations, it is then certain that the damages, such as they were claimed, since they are connected to the bankruptcy, could never be considered to be existing.

The specific listing of these damages, for which compensation is asked lacks a minimum of credibility because they are said to consist of 2,062,411,600 Lire, equal to the difference between the assessed value of the establishment, plant, and equipment, as shown on the balance sheet, on the date of Raytheon-ELSI's bankruptcy, with a figure of 6,622,800,000 Lire and the estimate prepared on 11 October 1968, by the technical consultant appointed by the official bankruptcy receiver, showing a figure of 4,560,588,400 Lire. The court quite correctly observed that there is no proof as to the reliability of the figures shown in the balance sheet and hence as to the actual determination of this value reduction, quite apart from the fact that, even according to the balance sheet to stay within the budget, it would have been necessary to subtract the liabilities pertaining to the amortization or modernization funds; and the Court added in an equally correct manner that there is no further, likewise indispensable proof that the above-mentioned reduction was caused by the requisition.

One can further add that the claim pertaining to this alleged value reduction does not seem to be the result of adequate reflection since the sums indicated result from the various values specifically assigned in the two above-mentioned documents not only to the plant and machinery, and fixture and fittings but also to the ground and buildings. Now, while the values assigned by the consultant in the 11 October 1968 report to the ground and buildings are considerably higher — and not lower — than those shown in the balance sheet (respectively, 503,938,500 Lire and 1,213,040,000 Lire, as against 167,000,000 Lire and 915,700,000 Lire), the difference as regards the plant and machinery, and as regards fixtures and fittings (respectively, 2,782,459,940 Lire and 61,150,000 Lire as against 5,329,600,000 Lire and 210,500,000 Lire; is considerably lower; and since it is inconceivable that it was the takeover [that pushed up] the value of the land and the buildings, a minimum of logic should have required that the damages should be reflected in the considerably higher figure resulting from the difference between the value of the plant and machinery and the fixtures and fittings alone in the two documents in the amount of 2,696,490,060 Lire.

The above considerations prove that these flaws which are, so to speak, intrinsic in the claim and these shortcomings in the evidence can never be corrected by the technical expert opinion requested by the official receiver, not to mention the fact that, in any event, no expert or consultant could now in any way establish the actual value of the plant and equipment on the date of the requisitioning order which — according to plaintiff's viewpoint — constitutes the element indispensable to determine the damages claimed.

This is why the Court's ruling must be upheld, and the receiver's appeal dismissed.

On the other hand, the Court considers this appeal to be justified as regards the damages derivable from the operational unavailability of the installation, plant, and equipment which are the subject of the takeover order, as a result of the execution of that order. The Court touched on this issue only briefly, stating that it has not been ". . . proven that the damages can be tied to the fact that the facility was not accessible, a state which moreover was limited in terms of time".

In point of fact, it must be noted that the takeover order was specifically directed at "the plant and relevant equipment owned by Raytheon-ELSI of Palermo", in other words, not at the Company as a whole, but rather at that specific property of the Company. And, to rule out any possible misunderstandings springing from some hint given by the Ministry of the Interior as to the failure to execute the order (something that is very important because the damages can be derived not from the order itself but from its execution, that is to say, from the material behavior of the administration), it must be affirmed that instead it was fully carried out, as one can see among other things from the fact that the Mayor appointed two representatives (Dr. Armando Colena and Attorney Nicolo Maggio) with the task of making sure that the orders and instructions given would be properly carried out, along with the assignment given to Mr. Aldo Profumo to manage the plant under the direction of the two above-mentioned representatives (Mayor's orders No. 568/2 and No. 570/2, dated 6 April 1968); all of this applied for a duration of six months, that is to say, from 2 April until 30 September 1968.

It is indisputable that, if the takeover order had been lawful, this would necessarily have led to the payment of an indemnity (Art. 835, Civil Code); indeed, in the Mayor's order itself we read that "a subsequent order will determine the takeover indemnity to be awarded to the above-mentioned Company". Now, apart from the consideration that the failure to determine this indemnity (no authority has ever proceeded to do that although this should have been done before the takeover came to an end), by itself would have been enough to recognize the unlawfulness of the takeover (Court of Cassation, 7 July 1967, No. 1676, *op. cit.*), one cannot fail to stress the incongruency of denying the Company — which had been subjected to this unlawful takeover — an indemnity which most certainly it would have been awarded if this same action had been taken lawfully by the administration.

By way of application of the juridical principles that were never doubted, it must instead be said that the deprivation of the enjoyment of an asset, undergone by the private proprietor, is in itself an economic sacrifice which entails adequate indemnification when it is lawfully carried out (takeover, requisition, etc.) and restitution of damage, when it is unlawful, a damage that is concretely expressed at least in terms of the current economic value of said usufruct (enjoyment) itself, except for the demonstration of further damages, as is constantly repeated in the copious and well-known jurisprudence of the Supreme Court in the analogous matter of emergency takeovers that had been ordered for the execution of public works, and which became unlawful.

There is no foundation to the objections which are raised on this point by the Ministry of the Interior which maintains in point of fact that the establishment was occupied by the personnel prior to the requisition and that, either for this reason or by decision of the Company to cease all activity as of 31 March 1968 (in other words, prior to the requisition), the establishment was no longer able to yield any earnings for the Company although such earnings would have ceased anyway upon declaration of bankruptcy; from this is deduced rightly that there would have been no income of which the Company could have been deprived on account of the requisition and which could have been compensated for by the requisitioning authority.

Regarding the event as such, the response is given in the form of a reminder of what was said earlier about the documentation pertaining to the specific, actual act of taking possession of the establishment by the Mayor which however could not have been adequately eliminated by the circumstance that the requisitioning authority tolerated the illicit takeover of the workplaces by the personnel; and, rightly so, that the Company which was stricken by this order does not have the burden of proving that, during the period of the takeover, it would have derived an income from the occupied assets since, as was noted, the damage resides *in re ipsa* (in the matter itself) and consists in having been deprived of the enjoyment of its own assets which, since this was unlawful, clearly makes the occupier responsible at least for the payment of the economic value of such enjoyment, so as to restore the property equilibrium which was upset by the unlawful act. Nor can any major obstacle to this conclusion arise from the bankruptcy declaration since, during the time before that, the trustee in bankruptcy (receiver) exercises a right of credit due the bankrupt Company which forms part of the bankruptcy (Art. 42 ff., Bankruptcy Law) and for the subsequent period, he exercises an inherent right since he is prevented from the determination of the assets and their use to the advantage of the creditors; not to mention that — by way of corroboration of the legality of the conclusion arrived at — there is the consideration that the delay in the process of taking possession by the receivers delayed the liquidation operations and hence the realization of the value of the requisitioned property to the evident damage to the bankruptcy assets.

Regarding the specific determination of these damages, equivalent as we said before, to the economic value of the enjoyment of said requisitioned property, in the absence of proof as to any greater damage, the Court states that, in the absence of terms of reference, also because of the singular nature of the requisitioned property one must proceed to liquidation in an equitable manner in accordance with Article 1226, as recalled in Article 2056, Civil Code. From this angle, one may consider that the value of this enjoyment can be equated to the amount of the interest at a rate of 5 per cent per year of the value of said property, as ascertained by the technical consultant appointed by the official bankruptcy receiver which, as we said, was equal to 4,560,588,440 Lire; it is noted in this connection that one cannot go along with the idea expressed by the receiver who instead asks for an interest rate of 10 per cent, equal to the rate of amortization of the industrial plant, because this amortization rate (even at a higher level in view of the fast obsolescence of the plant in question, as per page 2 of the report prepared by the above-mentioned technical consultant) can be allowed for the part of the above-mentioned sum pertaining to plant and equipment while, on the other hand, a by far lesser rate than 5 per cent should be allowed for the other, larger portion which is made up of the value of the land and the buildings since they compensate each other, one can consider it equitable to settle on a rate of 5 per cent for the whole.

Since the takeover lasted six months, the damages based on this criterion amount to 114,014,711 Lire $\frac{(= 4{,}560{,}588{,}440 \times 5:2)}{100}$ Lire; that is the sum that must be paid to the Company's receiver by the State Administration.

On this sum are due the interest payments which, according to the principles prevailing in the matter of liability for unlawful action, derive from the fact of the unlawful act itself and hence must be counted at least as of 1 October 1968, the date the takeover ended, as expressly asked for by the plaintiff.

As for the expenses, there is no reason to deny the principle of the position of the loser (Art. 91, c.p.c. (Civil Procedure Code?)), therefore they are charged to the Ministry of the Interior which must return them to the receiver, and with respect to the Mayor of Palermo, the receiver must bear the costs.

The former will be paid taking into account — as regards the value of the case — the sum awarded (illegible words) of the winning party and not the one that was asked for (Art. 6 of the Rate Schedule).

In accordance with the attached notes, the payment for the first instance shall total 2,000,210 (illegible) Lire, including 55,710 Lire for out-of-pocket expenses, 344,500 Lire for *diritti di procuratore* (attorney fees) and 1,600,000 Lire for honorarium; for the second instance a total of 2,388,610 Lire, including 66,610 Lire for out-of-pocket expenses, 202,000 Lire for *diritti di procuratore* and 2,120,000 Lire for honorarium.

The costs for this proceeding in favor of the Mayor — considering his much simpler position — can be assessed at a total of 1,826,600 Lire, including 26,100 Lire for out-of-pocket expenses, 200,500 Lire for *diritti di procuratore* and 1,600,000 Lire for honorarium.

THEREFORE

The Court

In definitively ruling on the petition of the above-mentioned parties,

Partly revising the judgment of the Palermo Court, dated 2 February-29 March 1973, appealed by the trustee in bankruptcy of Raytheon-ELSI Stock Company, sentences the Ministry of the Interior, in the person of the Minister, to pay to said receiver the sum of 114,014,711 Lire with the legal interest due as of 1 October 1968, as well as the costs of the two instances (degrees) of the trial, for the first instance, of 2,001,210 (illegible) Lire and for the second instance of 2,388,610 Lire.

As for the rest, it confirms the challenged judgment and sentences the above-mentioned trustee in bankruptcy to pay the Mayor of Palermo the costs of this instance of the trial, in the amount of 1,826,600 Lire.

(Schedule of fees paid.)

(Illegible hand entries.)

Registered on 24 January 1974.

(Illegible stamps and signatures.)

Annex 82

JUDGMENT OF THE SUPREME COURT OF APPEALS, DATED 26 APRIL 1975

(Translation)

R.G. 1448/2103/74.

REPUBLIC OF ITALY, IN THE NAME OF THE ITALIAN PEOPLE, THE SUPREME COURT OF APPEALS, FIRST CIVIL DIVISION

Hearing of 26 April 1975.

Consisting of Dr. Giuseppe Mirabelli, Presiding Judge, and Associate Judges:
Dr. Ugo Milano (illegible),
Dr. Francesco Falletti,
Dr. Vincenzo D'Orsi,
Dr. Fernando Santosuosso,
Dr. Giuseppe Scanzano,
for the first appeal (No. 1448/74) filed by

The Office of the Trustee in Bankruptcy of Raytheon-ELSI S.p.A., in the person of its trustee in bankruptcy, Attorney Giuseppe Siracusa, domicile of choice at 45 Sabotino Street, Rome, c/o Attorney Ennio Parrelli, represented and defended by Attorney Carmelo Lo Cascio, as per power of attorney appended to the petition.

Appellant

Versus

The Minister of the Interior *Summoned*

File: IIo (2103/74)

by

The Ministry of the Interior of the Italian Republic, in the person of the Minister in office, represented and defended by the Office of the Attorney General with headquarters at Via Portoghesi 12, Rome.

Counterappellant and interlocutory appellant

Versus

Estate in Bankruptcy of Raytheon-ELSI S.p.A. *Summoned*

against the sentence of the Palermo Court of Appeals dated 11/23/73-1/17/74;

Having heard the report on the trial held in public session by Assistant Judge Giuliano;

Having heard Attorney Lo Cascio;

Having heard the Public Prosecutor in the person of Assistant Attorney General Dr. Grossi who in his summation asked that both appeals be turned down.

COURSE OF THE PROCEEDING

On 20 December 1969 the trustee in bankruptcy of Raytheon-ELSI Stock Company summoned before the Palermo Court the Mayor of Palermo and the Ministry of the Interior and petitioned that they be jointly and severally sentenced to compensation of damages which he asserted were inflicted upon the Company as a result of the execution of an order for the takeover of its establishment and equipment, an order which the Mayor had issued on 1 April 1968, shortly before the bankruptcy declaration. The takeover was in effect until 30 September 1968; the Mayor's order had been cancelled by the Prefect on the grounds of unlawfulness through a decree dated 22 August 1969.

The two defendants appeared in Court. The Mayor argued by way of objection that he had no passive legitimation (that he could not be sued); his thesis was accepted and this point is not debated here.

The Ministry of the Interior opposed the petition, arguing that it was without foundation. In its ruling of 2 February-29 March 1973, the Court cleared the Ministry, repeating that the damages claimed by the trustee in bankruptcy had not been caused by the takeover (the requisition).

However, on appeal by the bankruptcy estate, which the Ministry opposed, the Palermo Court, through the sentence now challenged, by way of partial revision of the decision handed down by the first judge, sentenced the Ministry of the Interior to pay to the bankruptcy estate — as restitution of damages caused by the requisition — the sum of 114,014,711 Lire, plus legal interest as of 1 October 1968. The Court observed that the unlawful requisitioning was a source of liability so that, if it had been lawful, it would have entailed the obligation to pay an indemnity. And, excluding any other item of damage derived from the bankruptcy, it considered the only reparable damage to consist of the deprivation of the use of the establishment and equipment of the Company for a period of six months and as a yardstick for reparations for this damage it gave the "economic value of the enjoyment of the requisitioned property". This was determined, *ex bono et aequo* (on the merits of the case), at a rate of 5 per cent per year of the value of the property, specifically, 4,560,588,440 Lire.

The Company's trustee in bankruptcy proposed an early and routine appeal, with a single count, illustrated later by a memorandum; the Ministry of the Interior filed a counterappeal which contains an incidental remedy, with a single count.

MOTIVES BEHIND DECISION

After reviewing all the appeals, under the provisions of Article 335, *C.P.C.*, the Supreme Court considers above all the incidental appeal which, quite logically, must have precedence, since it has to do with the issue of the existence of reparable damage, while the principle appeal concerns the payment of the reparation.

The Ministry of the Interior charges violation and wrong application of Articles 2967 and 2043, *C.C.* (Civil Code), maintaining that the challenged sentence clearly affirmed the existence of reparable damage. In its opinion, the Court erred in referring to the obligation to pay indemnity as applicable to anyone who lawfully proceeds to requisition: it did not consider that — in the case of lawful requisition — the compensation is established by law according to objectively predetermined criteria, refraining from ascertaining the specific continued existence of reparable damages. In cases of unlawful requisition, leading to liability for damages, one must instead find out whether it really caused reparable damage. But, the Ministry adds, the Court of Palermo simply presumed the existence of such a damage.

This point of censure is without foundation. The challenged sentence as a matter of fact, based on a factual evalution, ascertained that the requisition did indeed deprive the Company of the availability and hence the usufruct of its own establishment and of the equipment contained therein for a period of six months. And it logically deduced from this that said deprivation did cause damage equal to the value of the usufruct itself.

Through the principal appeal, the trustee in bankruptcy charges "violation of Articles 1226 and 2056, Civil Code, in relation to Articles 113, 115, 132, 161, and 360, *c.p.c.*". It deplores the fact that the Court in question came up against a contradiction in settling the reparable damage since, on the one hand, it asserted that, for the purpose of determining the damage, one would have to consider the annual amortization rate of the requisitioned property and that said rate was at least 10 per cent of the value of the industrial plant facilities while it was by far less than 5 per cent for the land and buildings; on the other hand, it had settled the damage at a smaller sum than would have resulted for the amortization of the industrial plant alone, as calculated at the rate of 10 per cent. In this respect, the trustee in bankruptcy bases his arguments on the values of the individual sources ascertained in the challenged decision itself.

This criticism likewise does not merit acceptance. It is, as a matter of fact, aimed only at marginal considerations entertained by the Palermo Court which — after having *ex bono et aequo* settled the reparable damage on the basis of the annual rate of 5 per cent of the total value of the requisitioned property, understood here as "value of usufruct" — added, *ad abundantiam* (on top of everything else) that one could not instead go along with the "thesis of the trustee in bankruptcy" which referred to the amortization rate.

In rejecting this thesis, the challenged decision in reality made an error calculation, implying a logical contradiction, as charged by the bankruptcy side. But this does not detract from the fact that the settlement of the reparable damage was done in an equitable manner and hence with a factual assessment that cannot be censured here with regard, not to the amortization rates, but rather to all of the circumstances involved in the specific case, considered as a whole. By virtue of its nature, the *ex bono et aequo* settlement is divorced from any rigid specifications. The considerations as to the amortization rates of the individual property items entered into superfluously by the Court involved conflict with the result at which it (the Court) arrived but do not justify an appeal against the challenged decision since one could not force the retrial judge — as the bankruptcy side would have it — to proceed to an equitable settlement, that is to say, to his discretionary evaluation relating only to one of the elements that can be examined to that end.

In conclusion, both appeals are rejected herewith; and it appears to be fair to divide the costs of this trial between the parties.

The trustee in bankruptcy is sentenced to loss of deposit.

The Court therefore, after reviewing the appeals, rejects them.

The cost of the appeals court trial is to be shared between the parties.

The Court sentences the bankrupt estate of the Raytheon-ELSI Company to forfeiting its deposit.

Rome, 26 April 1976.

Annex 83

CERTIFICATE OF GOOD STANDING, STATE OF DELAWARE, RAYTHEON SERVICE COMPANY, DATED 22 DECEMBER 1986

[Not reproduced]

Annex 84

PROOF OF RAYTHEON COMPANY'S 100 PER CENT OWNERSHIP OF RAYTHEON SERVICE COMPANY, DATED 8 OCTOBER 1986

[Not reproduced]

Annex 85

SENATE OF THE REPUBLIC, BILLS AND REPORTS, 1948-1949, N. 344-A, REPORT OF THE MAJORITY, PAGE 2, SENT TO THE OFFICE OF THE PRESIDENT ON 28 MAY 1949

[See Counter-Memorial of Italy, Annex 7]

Annex 86

COMMERCIAL TREATIES: HEARINGS BEFORE THE SPECIAL SUBCOMMITTEE ON COMMERCIAL TREATIES AND CONSULAR CONVENTIONS, COMMITTEE ON FOREIGN RELATIONS, UNITED STATES SENATE, 82D CONGRESS, 2D SESSION (1952)

HEARING BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON FOREIGN RELATIONS, UNITED STATES SENATE, EIGHTY-SECOND CONGRESS, SECOND SESSION ON TREATIES OF FRIENDSHIP, COMMERCE, AND NAVIGATION BETWEEN THE UNITED STATES AND COLOMBIA, ISRAEL, ETHIOPIA, ITALY, DENMARK, AND GREECE

EXECUTIVES M AND R, EIGHTY-SECOND CONGRESS, FIRST SESSION, AND EXECUTIVES F, H, I, AND J, EIGHTY-SECOND CONGRESS, SECOND SESSION, MAY 9, 1952

COMMITTEE ON FOREIGN RELATIONS

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J. W. Fulbright, Arkansas
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Mosella R. Hammer, *Assistant Clerk*
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Special Subcommittee on Commercial Treaties and Consular Conventions

John J. Sparkman, Alabama, Chairman

J. W. Fulbright, Arkansas
Bourke B. Hickenlooper, Iowa

COMMERCIAL TREATIES

Friday, May 9, 1952

UNITED STATES SENATE, COMMITTEE ON FOREIGN RELATIONS, SUBCOMMITTEE ON COMMERCIAL TREATIES AND CONSULAR CONVENTIONS

Washington, D.C.

The subcommittee met, pursuant to notice, in the committee hearing room, United States Capitol, at 10 a.m., Senator John Sparkman (chairman of the subcommittee) presiding.

Present: Senators Sparkman (chairman of the subcommittee) and Hickenlooper.

Senator Sparkman: Let the committee come to order, please.

The members of this subcommittee, in addition to myself, are Senator Fulbright, who is out of town, and Senator Hickenlooper.

The chairman of the Committee on Foreign Relations, Senator Connally, has asked this subcommittee to consider six treaties of friendship, commerce and navigation, now pending before the committee. The treaties now before us are the following:

Executive M (82d Cong., 1st sess.), treaty of friendship, commerce, and navigation with Colombia;

Executive R (82d Cong., 1st sess.), treaty of friendship, commerce, and navigation with Israel;

Executive F (82d Cong., 2d sess.), treaty of amity and economic relations with Ethiopia;

Executive H (82d Cong., 2d sess.), agreement supplementing treaty of friendship, commerce, and navigation with Italy;

Executive I (82d Cong., 2d sess.), treaty of friendship, commerce, and navigation with Denmark; and

Executive J (82d Cong., 2d sess.), treaty of friendship, commerce, and navigation with Greece.

I propose, if it is agreeable to the subcommittee, to ask representatives of the Department of State first to direct their comments to the six commercial treaties and then to the two consular conventions.

In recent years the Senate has given its advice and consent to treaties of friendship, commerce, and navigation with Italy in 1948, Uruguay, 1949, and Ireland, 1950. These postwar treaties are part of the program that the Department of State has been carrying on over a period of years seeking to modernize treaties with a number of countries with whom earlier treaties were negotiated in the nineteenth century.

The Department of State [illegible] a recent publication, has described these treaties as —

> a charter of the American citizen's rights when he is in a foreign country. They assure him for the most part of the fundamental personal liberties that he enjoys in this country. They pledge constant protection and security for his person and property. They allow him to engage in the normal run of business pursuits, whether by himself or in association with others, and in general assure to him the privileges necessary to carry on his business effectively.

The first witness this morning will be Mr. Harold Linder, Deputy Assistant Secretary of State for Economic Affairs. Mr. Linder, will you proceed, please, sir, in your own way?

STATEMENT OF HAROLD F. LINDER, DEPUTY ASSISTANT SECRETARY OF STATE FOR ECONOMIC AFFAIRS, DEPARTMENT OF STATE

Mr. Linder: Senator, the treaties with Colombia, Greece, Israel, Ethiopia, and Denmark which are now before you bring to nine the number of treaties of this general type which have been signed on behalf of the United States since the war. You will recall that the first two treaties of this series, those with China and Italy, were considered by the committee in 1948 and those with Uruguay and Ireland two years later, and that those treaties were approved by the Senate. The treaty with Italy has now been supplemented by an agreement, also before you, designed to bring it abreast of developments reflected in the more recent ones.

Similarities and Differences between the Commercial Treaties

While there are differences among these nine treaties, fundamentally they are alike. The treaties with Colombia, Denmark, and Israel follow closely the treaty with Uruguay, which in turn was a restated form of the one with Italy. The treaty with Greece is also based on the Uruguay model, but with changes in matters of form. The treaty with Ethiopia is a specially adapted version of the document negotiated with the other countries, involving considerable abridgement of the usual provisions and the addition of articles on diplomatic and consular officers no longer usual in this type of treaty. All three treaties also reflect differences of varying extent in matters of detail, both as a result of new or improved provisions which have been developed from time to time by the Department of State, with counsel, of course, from other agencies and as a result of the adjustments that inevitably occur during the give-and-take of negotiation. For example, the basic establishment provisions have been extensively restated in the treaty with Israel, additional provisions on shipping are included in the Greek treaty, and a provision regarding the use of the term "coffee" has been added to the treaty with Colombia. But the general objectives remain the same and, with the departures that may be noted in the case of Ethiopia, all the treaties go about realizing these objectives in essentially the same way.

The more notable differences in the several treaties now before you, both as among themselves and as compared with those previously approved by the Senate, are summarized in the report of the Secretary of State attached in each case to the President's message of transmittal. I want to submit now, for the convenience of the committee, copies of a tabular comparison which indicates in greater detail the similarities and differences of these instruments on a provision-by-provision basis. In my opening remarks I shall not attempt to repeat or elaborate on that information, leaving the discussion of details to be guided by the questions the committee might have. To assist in providing specific information about particular provisions, I have with me two officers of the Department who have been immediately responsible for the technical aspects of these treaties.

I have three exhibits.

Senator Sparkman: They will be received and made a part of the committee files.

(The exhibits referred to were received and made a part of the committee file.)

Senator Sparkman: It was not your idea to have these printed in the record, but simply to be made exhibits?

Mr. Linder: That is correct.

Commercial Treaty Program

The commercial treaty program is the oldest continuing economic program of our Government. It dates back to the beginning of our national independence and has been kept up, with minor interruptions, ever since. As a rule the first treaty concluded with a foreign country has tended to be a treaty of friendship, commerce, and navigation, which sets the framework in which our economic relations can be conducted on a stable basis for the future. The instrument aims at establishing the rule of law in our everyday relations with the country concerned, at protecting our citizens and their property in the foreign country, at promoting our trade, and at reducing discriminations against our shipping. An idea of the enduring character of these treaties may be gained from the fact that the treaty with Denmark now before you is to replace a treaty negotiated with that country in 1826 and the treaty with Colombia will take the place of one signed in 1846.

Modern Phases of the Treaty Program

While this is a traditional program with a history of over a century and a half, its modern phase dates from the years immediately after the First World War. At that time, a broadened and revitalized program devoted particularly to the expansion of our foreign trade was developed under the direction of Secretary Charles Evans Hughes. Negotiations were carried on extensively until the outbreak of World War II, resulting in the conclusion of treaties with 12 countries.

While the current program is a continuation of that instituted under Secretary Hughes, remaining similar in fundamentals to what has gone before, the present program reflects new emphasis occasioned by problems which have taken on increased importance in recent years. The consular provisions have been detached in the interest of more effective treatment of each subject-matter. The form and content of the treaty has been expanded and revamped; and the pace of negotiation has accelerated. In this connection it may be noted that in the first six years after the end of World War I three treaties were concluded. In the same length of time after World War II nine treaties have been signed, although the commitments contained in the current treaties tend to be more far-reaching, and the general international climate is less sympathetic to the free-enterprise premises on which these treaties are based. Moreover, as you will recognize governments all over the world are constantly preoccupied with pressing and critical problems — not exactly an atmosphere conducive to negotiations of agreements of the type now before you.

Emphasis on Encouraging Private Investment Abroad Through Greater Protection of the Investor

Perhaps the most important respect in which the current treaties differ from those of the twenties and thirties is in the greatly increased emphasis on the encouragement of American private investment abroad, by the expansion and strengthening of provisions relating to the protection of the investor and his interests. This development, of course, reflects the process of continuous adjustment to the needs and conditions of the era in which negotiation takes place. The United States came out of the war with a greatly expanded industrial machine and, alone among the major nations of the world, with a surplus of private capital available for export. To encourage the investment of this capital in the production of goods and services abroad was a matter of importance to our domestic economy and to economic development and world prosperity generally. Apart from these purely economic considerations, moreover, foreign investment can strengthen the common defense and promote the prevalence of ideas of individual liberty and individual initiative under law.

The basic aim of these new provisions has been to safeguard the investor against the nonbusiness hazards of foreign operations, an objective emphasized by the Congress in the Act for International Development of 1950. There is no intent here, of course, to shield the investor from the economic risks to which venture capital is subject, a matter which cannot and should not be reached through international agreement. However, there are grave hazards of a nonbusiness nature which have become characteristic in overseas business operations since the war. They assume many forms: Inequitable tax statutes, confiscatory expropriation laws, rigid employment controls, special favors to State-owned businesses, drastic exchange restrictions, and other discriminations against foreign capital. Taken together, they can be a formidable obstacle to the American investor, for they impair from the very start the prospect of fair competition and a reasonable profit. Yet these hazards are not infrequently legal rather than economic, and they can be checked to a substantial extent by treaties which establish mutually agreed standards of treatment for the citizens and enterprises of one country within the territories of another.

Rights of Corporations Recognized

Perhaps the most striking advance of the postwar treaties over earlier treaties is the cognizance taken of the widespread use of the corporate form of business organization in present-day economic affairs. In the treaties antedating World War II American corporations were specifically assured only small protection against possible discriminatory treatment in foreign countries. In the postwar treaties, however, corporations are accorded essentially the same treaty rights as individuals in such vital matters as the right to do business, taxation on a nondiscriminatory basis, the acquisition and enjoyment of real and personal property, and the application of exchange controls. Furthermore, the citizens and corporations of one country are given substantial rights in connection with forming local subsidiaries under the corporation laws of the other country and controlling and managing the affairs of such local companies. The legal reason inhibiting a more extensive provision for corporations in earlier treaties (namely, the reserved rights of the states as to the admission of foreign corporations) has been solved in the current treaties by a formula which equates the alien corporation to other out-of-state corporations, rather than to the domestic corporation, for purposes of "national treatment" in the United States.

Problems Arising out of State Ownership of Economic Enterprises

Another significant feature of the postwar treaties of interest to the prospective investor is the body of provisions which deals with problems arising from the state ownership of economic enterprise. There is a growing tendency abroad for the real competitor of private business to be the government itself. The Department of State has, accordingly, endeavored to work out treaty provisions designed to reduce the hazards of unfair competition from state-controlled businesses. These clauses provide assurances of most-favored-nation treatment in the conduct of state-trading operations and in the awarding of government contracts and concessions. They also establish broadened rules governing the carrying out of nationalization programs. There are as well newly developed provisions, found first in the 1948 treaty with Italy to assure American private business concerns which must compete with foreign state-owned concerns the same economic favors that the latter received from their government, and to assure that state-owned commercial enterprises of the one country engaged in business in the other country will not be immune from taxation, suit, or other normal liabilities by reason of their public character.

Provision on Exchange Control

Another important development in the post-World War II treaties is the provision on exchange controls. The formulation of such a provision poses difficulties.

Many foreign countries have a genuine need to protect their limited foreign-exchange reserves in order to insure that the highest-priority needs of their economy are met. At the same time, there is a real need for liberal provisions on withdrawals of earnings that will afford a proper protection to investors. We have sought to achieve a fair balance between the two factors.

Older Provisions Revised

In addition to the innovations introduced to better the climate for investment, substantial improvements have been introduced in provisions of longer standing. The rules on expropriation of property have been worked out in more detail; more explicit assurances have been formulated on basic personal freedoms and protection for the individual; and causes have been added on freedom of communication and of reporting. Provisions on commercial arbitration and the employment of technical personnel have been added; and traditional provisions for nondiscriminatory treatment of shipping have been strengthened.

The continuing process of revamping of the standard provisions has benefited these treaties as a whole, both as the content and language. What we hope constantly to achieve is stronger articles, fewer exceptions and, above all, a document which can give the American citizen who goes abroad, whether for business, pleasure, livelihood, or study, a firm and clear body of rights and privileges.

Mutuality of Rights Accorded by the Treaties

So far I have spoken mainly about the rights these treaties assure and the protection they give to American citizens and businesses in foreign countries. However, these treaties are not one-sided. They are drawn up in mutual terms, in keeping with their character as freely negotiated instruments between friendly sovereign equals. Rights assured to Americans in foreign countries are assured in equivalent measure to foreigners in this country. In undertaking treaty commitments that would formally confirm to foreigners a substantial body of rights in the United States, the Department of State has exercised great care to frame provisions that would be in conformity with Federal law. The exception is that Article VII of the supplementary agreement with Italy provides for the development of arrangements not provided for by existing Federal statute regarding totalization of social-security benefits. Furthermore, where the subject-matter covers fields in which the States have a paramount interest, such as the formation and regulation of corporations and the ownership of property, the treaty provisions have been worked out with the same careful regard for the States' prerogatives and policies that has traditionally characterized agreements of this type.

Limitations and Objectives of the Treaties

These documents are concerned primarily with legal conditions and with the effect such conditions may have on economic activities carried on across international boundaries. While they are comprehensive documents, they are not able to remove all legal impediments to investment, owing both to the inherent nature of such a treaty and the complexity of present-day economic affairs. While these treaties are concerned with everyday matters, they are not exclusively economic in nature or purpose; they are also, and perhaps above all, treaties of friendship. Their objectives are the normal objectives of friendship between nations: to protect the foreigner, to maintain good order in everyday affairs, to encourage mutually beneficial relations, to strengthen the rule of law in the dealings of one nation with another. They are practical expressions of good faith and good neighborliness as much as they are legal contracts. Their worth rests as much on their equity and reasonableness as on the number and scope of the privileges they specify; and their spirit, which goes beyond the limits and wording of the treaties themselves, is in every way as important as the letter of the undertakings they actually make.

The Department of State for many reasons regards these treaties as an important element in promoting our national interests and building a stronger economy within the free world through the traditional American means of private enterprise; and it is most gratified that your committee is finding time from a very crowded calendar to give them its study and attention.

Thank you, Mr. Chairman.

Senator Sparkman: Thank you, Mr. Linder.

Encouragement of Private Investment

Now let me ask you a few questions pertaining to this. You are familiar with the provision in the proposed Mutual Security Act of 1952, written in by the House in the following language — or, rather, reported out by the House committee; the House has not acted on it yet (reading):

> The Department of State shall accelerate a program of negotiating commercial and tax treaties or other arrangements where more suitable or expeditious, which shall include provisions to encourage and facilitate the flow of private investment to countries participating under this Act.

Are these proposed treaties which we have before us now designed to accomplish this purpose?

Mr. Linder: I think without question, Mr. Chairman, they provide a climate in which private investment can flow. They do not guarantee private investment, but I think it is fair to say that without such treaties certain impediments exist which would retard the flow of investments, and to that extent I think they stimulate them.

Senator Sparkman: You think they represent a step forward?

Mr. Linder: Very definitely.

Senator Sparkman: What is the effect of the unconditional most-favored-nation clauses in these treaties?

Most-Favored-Nation Clauses and "National Treatment"

Mr. Linder: Well, I have referred to both most-favored-nation clauses and I have also referred to the expression "national treatment". The most-favored-nation clause guarantees to us that we shall receive equivalent treatment to any treatment accorded to any other nation. "National treatment" insures that our own nationals or corporations will receive treatment equal to the treatment accorded to the nationals of the country with which we have the treaty.

Senator Sparkman: That is, their nationals in this country?

Mr. Linder: No; their nationals in their own country.

Senator Sparkman: I see; so as to make uniform national treatment.

Mr. Linder: That is correct.

Senator Sparkman: Let me ask you, do some of the treaties contain the most-favored-nation clause and others contain the national-treatment clause?

Mr. Linder: I think it is fair to say that all treaties contain both. There are times when the most-favored-nation clause is more important than the national-treatment clause, because the country with whom we have the treaty may have accorded rights to other foreigners which are better than the rights they have accorded to their own nationals. On the other hand, there are times when the national-treatment clause is more important, because rights accorded to the nationals of that country may not have been accorded thus far to any other foreigner; and, therefore, we strive to get in that case national treatment.

Senator Sparkman: And you have worked in these treaties to get the most favored position for our nationals?

Mr. Linder: We have, sir.

Protection Against Nationalization

Senator Sparkman: Do these treaties give Americans any protection in the case of nationalization of properties affected with American interest?

Mr. Linder: I think they give a great deal of protection, Mr. Chairman. The basic rule, of course, is that if there is to be nationalization — and we do not feel that we can negotiate a treaty which would deny another government the right to nationalize property — there must be for the American interest prompt, just, and effective compensation.

In addition to that, there must be national treatment or most-favored-nation treatment, whichever is the better from our point of view. In other words, they cannot nationalize us when they do not nationalize other industries engaged, or other businesses engaged, in the same type of business. They can't pick us out so that we become discriminated against.

These standards of as good treatment as their own nationals get, or as good treatment as the national of any other country gets, are not enough. In addition to that, we go back to our basic thing: That there must be full compensation, and that it must be prompt and just and effective, and that it must also contain provisions which will permit the conversion of that compensation from a local currency back into dollars; and, further, in addition to that, we have taken the position — I think most effectively — that countries that propose nationalization must have planned the thing sufficiently so that they are able to meet the conditions of our treaties. They can't just say they are going to nationalize without making provision in advance for that nationalization, without knowing where the money is going to come from, how they are going to nationalize, what the criteria of "just compensation" are going to be; and, in other words, just decide that they are going to nationalize.

Taxation Provisions

Senator Sparkman: Do these treaties give protection to Americans and American corporations against discriminatory treatment with respect to taxation?

Mr. Linder: These are not tax treaties; that is to say, they do not provide for —

Senator Sparkman: I understood in your direct statement you did include some reference to taxation.

Mr. Linder: They do include a guaranty that we will not be taxed in any country, and no American corporation will be taxed, beyond the activities of that corporation within the country. That is to say, if a large American corporation has a subsidiary operating in a foreign country, the only thing the foreign country can tax is the business that is conducted within its territory. To that extent the answer surely is "Yes".

Furthermore, we do have provisions which will insure that we will not be taxed, or our corporations will not be taxed, beyond the tax that is enacted by that government and affects its own nationals, and also we have the guaranties with respect to most-favored-nation.

Senator Sparkman: In other words, those provisions apply to the matters of taxation as well as they do to anything else?

Mr. Linder: They do.

References to the General Agreement on Tariffs and Trade

Senator Sparkman: Some of these conventions refer to the General Agreement on Tariffs and Trade. Do these references imply in any way to congressional approval of that?

Mr. Linder: They do not, sir; but I would like to answer, if I may, sir, for the record, that statement a little bit more carefully by reading an excerpt from a letter which we addressed to Senator Millikin in respect to this point. Our letter read:

> The purpose of this kind of provision is not to obtain Senate approval of the general agreement. Its purpose is simply to clarify the relationship between the treaty and the General Agreement on Tariffs and Trade, where the two instruments exist side by side, so as to obviate possible confusion concerning the international rights and obligations of a country which is party to both instruments. The provision is thus in the interests of orderly treaty procedure. Being framed in the form and style of a reservation, to provide for a contingency, it does not in any way bind the United States as to participation or nonparticipation in the General Agreement on Tariffs and Trade.
>
> The Senate has already given advice and consent to ratification of two treaties containing a nearly identical clause which also refers to the charter for an international trade organization (Treaty of Friendship, Commerce, and Economic Development with Uruguay, signed November 23, 1949, 81st Cong., 2d sess. . . . and Treaty of Friendship, Commerce, and Navigation with Ireland, signed January 21, 1950). . . . We do not consider that Senate action on these treaties constitutes approval by the Senate of the General Agreement on Tariffs and Trade.

References to Copyright Matters

Senator Sparkman: Are there any provisions in these treaties, or any one of them, that affect the copyright laws?

Mr. Linder: No; there are not.

Senator Sparkman: The copyright laws of the United States?

Mr. Linder: I do not think there are.

Senator Sparkman: I believe we have had a letter from the State Department with reference to that, have we not? It might be well to incorporate that in the record at this point.

There will be placed in the record at this point an exchange of letters between Mr. Arthur Fisher, Register of Copyrights of the Library of Congress, and Mr. Adrian S. Fisher, Legal Adviser to the Department of State, under dates of April 23 and May 6, 1952.

Copyright Office,
The Library of Congress,
Washington 25, D.C., April 23, 1952.

Mr. Adrian R. Fisher,
Legal Adviser, Department of State, Washington 25, D.C.

Dear Mr. Fisher: There are presently pending before the Senate Foreign Relations Committee treaties of friendship, commerce, and navigation with Colombia, Greece, Israel, Ethiopia, Italy, and Denmark, similar to those ratified within the past few years with Uruguay and Ireland. In connection with these latter two treaties, there appeared in the report of the Senate Foreign Relations Committee a statement to the effect that neither treaty touched on any question of copyright.

In view of the fact that the six pending treaties have provisions similar to those embodied in the treaties relating to Uruguay and Ireland, it would seem to follow that the pending treaties also do not relate in any manner to questions of copyright. Kindly advise me whether or not my understanding is correct in this respect.

Sincerely yours,

Arthur FISHER,
Register of Copyrights.

Department of State,
Washington, May 6, 1952.

Mr. Arthur Fisher,
Register of Copyrights, Copyright Officer, The Library of Congress

My Dear Mr. Fisher: Reference is made to your letter of April 23, 1952, in which you request confirmation of your understanding that certain treaties which are presently pending before the Senate Foreign Relations Committee do not relate in any manner to questions of copyright.

You are advised that your understanding in this respect is correct and that the treaties of friendship, commerce, and navigation with Colombia, Denmark, Greece, and Israel, the treaty of amity and economic relations with Ethiopia, and the agreement supplementing the treaty of friendship, commerce, and navigation with Italy do not relate to copyright matters.

Sincerely yours,

Jack B. TATE,
Acting Legal Adviser.

Senator Sparkman: Mr. Linder, in a statement that has been submitted in letter form from the National Foreign Trade Council a suggestion is made for a broader investment clause. Are you familiar with that?

Mr. Linder: Sir, I saw the letter just as I came in. I really have not had an opportunity to study it.

Senator Sparkman: He starts out discussing it on page 5 and continues on page 6. I wonder it you could discuss that and tell us why the State Department has not been able to get this broad coverage.

Mr. Linder: Mr. Chairman, I am a little loath to discuss it because I have given it only the most superficial reading.

Convertibility in Event of Nationalization

Senator Sparkman: I wonder if I might ask this question, that might at least show it a little more clearly on the record. As I understand, these treaties provide for convertibility in the event of nationalization or taking over.

Mr. Linder: They do, sir.

Senator Sparkman: They provide first for compensation, and that that compensation shall be in dollars rather than in the currency of the country, for the amount that was orginally invested in the company. The Foreign Trade Council, as I understand it, recommends that the entire amount that has gone in, the earnings that have been plowed back in, should be covered also.

Mr. Linder: We think they are covered.

Senator Sparkman: You think they are covered by these treaties?

Mr. Linder: I think they are. As I understand, the way this treaty would be interpreted in case of an expropriation is that this specific clause does not in any way impair just compensation, and just compensation and equitable compensation must be in terms of the value which then exists.

Senator Sparkman: The question was raised as to ambiguity in the provision. The Foreign Trade Council particularly points out a qualifying phrase "which they have supplied". The contention of the Foreign Trade Council is that this might be held to apply only to the amount of capital originally supplied, and that it would not cover the investments that had been plowed back.

Now, is it your interpretation that it does cover the reasonable value of the entire capital structure?

Mr. Linder: Yes, sir; that is my interpretation, and I am sure, while I didn't take an active part in the negotiation of any one of these, that that is clearly understood on the part of each signatory to any of our treaties. I don't think it would make any sense whatever to talk only in terms of an original investment. W. R. Grace & Co. made an investment in Chile 120 years ago, or certainly a long, long number of years ago, and there may have been an accumulation of earnings in that company over a very long period of time. Surely if that property were to be expropriated by the Chilean Government the original investment could not in any sense be regarded as a just and equitable standard for compensation. What must be determined is the value of the property as it exists at the time it is expropriated, and while, as I say, I have a certain reluctance to discuss this in detail *(a)* because I am not a lawyer and *(b)* because I have not read carefully the comment of the Foreign Trade Council, I feel reasonably certain of my ground in stating as I have, that it does cover the investment, as it exists at the time of expropriation.

Mr. Herman Walker, Jr. (Office of Assistant Secretary of State for Economic Affairs): We have a specific clause on expropriation which says:

> Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of the expropriation for determining and effecting such compensation.

Senator Sparkman: Now let us go one step further. That is as far as compensation. I wonder if you can point out the clause relating to convertability at the same time.

Mr. Linder: The clause in the treaty with Colombia, for example, Mr. Chairman, is Article XII, section 3. That says —

> If either party imposes exchange restrictions in accordance with paragraph 3 above —

which permits certain types of exchange restrictions necessary to preserve the economy of the country —

> it shall, after making whatever provision may be necessary to assure the availability of foreign exchange for goods and services essential to the health and welfare of its people, make reasonable provision for the withdrawal, in foreign exchange in the currency of the other party, of: *(a)* the compensation referred to in Article VI, paragraph 3, of the present treaty —

the one to which I have previously made reference —

> *(b)* earnings, whether in form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and *(c)* amounts for amortization of loans, depreciation of direct investments, and capital transfers, giving consideration to special needs for other transactions.

This is subsidiary to that, and it guarantees where there is a multiple rate of exchange. If you would like me to read that, I can go on.

Senator Sparkman: Where does this phrase to which the Council points occur?

Mr. Walker: It is in a different paragraph, sir.

Senator Sparkman: I wonder if you could read that sentence. It is hard to tell, when words are just lifted out of contexts such as this.

Mr. Walker (reading):

> Neither party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other party in the enterprises which they have established or in the capital, skills, arts or technology which they have supplied; nor shall either party unreasonably impede nationals and companies of the other party from obtaining on equitable terms the capital, skills, arts and technology it needs for its economic development.

Mr. Linder: I am informed, sir, that that is supplemental to and in no way restricts or limits the broad basis for compensation which we have just been discussing.

Senator Sparkman: Then it is your opinion that the objection raised with reference to that matter by the National Foreign Trade Council is not justified?

Mr. Linder: Sir, I would say absolutely, except that I have not read every word of the National Foreign Trade Council's letter. I just received it as I came into this room. I would say categorically, with only the reservation that if I find our Legal Adviser has any reservation, he will communicate it to the committee.

Senator Sparkman: I wonder if it might not be well simply to have the Legal Department address a letter to us to be put in the record on that question.

Mr. Linder: We will be happy to do it, sir.

(The following information was subsequently furnished:)

May 21, 1952.

Hon. John J. Sparkman,
Committee on Foreign Relations, United States Senate.

My Dear Senator Sparkman: I refer to the hearing held by your subcommittee, May 9, on the pending commercial treaties and to the question raised during the course thereof concerning what these treaties provide as to compensation for property which is expropriated, with particular reference to the effect of Article VIII of the treaty with Greece. The Legal Adviser's Office has prepared a brief statement, enclosed herewith, which confirms the opinion I expressed in this matter. I offer the Legal Adviser's statement for inclusion at an appropriate place in the record, in order that there not be the slightest doubt about the correct answer to this important question.

Sincerely yours,

Harold F. LINDER,
Deputy Assistant Secretary for Economic Affairs.

Enclosure.

STATEMENT OF THE OFFICE OF THE LEGAL ADVISER — MAY 16, 1952

Article VIII of the treaty with Greece, and the similar provision of the other treaties before the subcommittee, is entirely independent of, and in no way modifies, the provisions of Article VII, paragraph 3, and comparable provisions of the other treaties, which establishes the rule of compensation applicable when property is expropriated through nationalization or otherwise. Article VII, paragraph 3, of the treaty with Greece states the governing rule in all cases of expropriation, that compensation shall be payable on the basis of the full value of the property taken, at the time of the taking. Compensation based on the value of the initial investment would not meet the standard of the treaty or of international law, if it were less than the value at the time of taking; if the value of the initial investment were greater than the value at the time of taking, a country is obliged only to provide compensation for the value at the time of taking.

Senator Sparkman: I may say that at the end of Mr. Linder's testimony I will insert in the record, if there is not objection, the letter from the National Foreign Trade Council, Inc., addressed to me on May 8.

Senator Hickenlooper: Can we identify, at least for my benefit, Mr. Chairman, the National Foreign Trade Council? Of what is it composed?

Mr. Linder: I prefer to have Mr. Vernon describe it, if I may.

Mr. Vernon: The National Foreign Trade Council is an organization which has been in the field of promoting foreign trade and international investment for rather a long time. I would say they are probably "the" organization in the field at this moment in the United States.

Senator Sparkman: It is a well-known and reputable organization?

Mr. Vernon: Well-known and reputable, and its membership looks like a glossary of Standard & Poor's.

Senator Hickenlooper: Throughout the United States?

Mr. Vernon: That's right.

Senator Sparkman: Senator Hickenlooper, do you want to ask Mr. Linder some questions?

We have had Mr. Linder's statement, which was a prepared statement. You have a copy of it there in your file, and I addressed these questions to him.

Senator Hickenlooper: There is one line of questioning I would like to address, probably two or three questions, to Mr. Linder. Did you ask Mr. Linder all of these questions?

Senator Sparkman: Yes.

Relationship of Treaties to Gatt

Senator Hickenlooper: I am sorry to ask you to repeat, Mr. Linder, but I would like to know, especially, do any of these conventions in any way, and under any circumstances, according to your interpretation and the Department's interpretation, involve us in the General Agreement on Tariff's and Trade?

Mr. Linder: They do not, sir. I introduced and read, in order to be sure that we were quite explicit about it, a statement which is quoted from a letter which we addressed to Senator Milliken very recently — as a matter of fact, a couple of months ago, the last day of February. If you would like me to do so, I shall be very glad to read that to you again.

Senator Sparkman: I may say, Senator Hickenlooper, that we have a letter from the State Department signed by Mr. John M. Leddy, Director, Office of Economic Defense and Trade Policy, in which he brings out the same point, and says (reading):

> . . . it does not in any way bind the United States as to participation or nonparticipation in the General Agreement on Tariffs and Trade.

Mr. Linder: Senator, would you prefer that I read this statement?

Senator Hickenlooper: If you have already put it in the record, there is no use in putting it in again. Is it already in the record?

Mr. Linder: I have read it carefully and we will be glad to provide it for the record.

Senator Hickenlooper: If you have already read it in the record, there is no use in repeating it here.

Senator Sparkman: Without objection, we will also put this letter in the record, which is to the committee in answer to this particular inquiry.

(The communication is as follows:)

Department of State,
Washington, February 29, 1952.

Mr. Carl Marcy,
Staff Associate, Committee on Foreign Relations, United States Senate.

Dear Mr. Marcy: This is in response to your inquiry, during our recent telephone conversation, as to what is the Department's view of the provision referring to the General Agreement on Tariffs and Trade in the Treaties of Friendship, Commerce, and Navigation with Denmark (Art. XXI, para. 3), Greece (Art. XII, para. 4), Israel (Art. XXI, para. 3) and Ethiopia (Art. XII, para. 6), all of which are now pending before the Senate.

The purpose of this kind of provision is not to obtain Senate approval of the general agreement. Its purpose is simply to clarify the relationship between the treaty and the General Agreement on Tariffs and Trade, where the two instruments exist side by side, so as to obviate possible confusion concerning the international rights and obligations of a country which is party to both instruments. The provision is thus in the interests of orderly treaty procedure. Being framed in the form and style of a reservation, to provide for a contingency, it does not in any way bind the United States as to participation or nonparticipation in the General Agreement on Tariffs and Trade.

The Senate has already given advice and consent to ratification of two treaties containing a nearly identical clause which also refers to the charter for an international trade organization (Treaty of Friendship, Commerce, and Economic Development with Uruguay, signed November 23, 1949, 81st Cong., 2d sess., Senate Executive D, Art. XVIII, para. 3; and Treaty of Friendship, Commerce, and Navigation with Ireland, signed January 21, 1950 (*TIAS* 2155), Art. XX, para. 2). We do not consider that Senate action on these treaties constitutes approval by the Senate of the General Agreement on Tariffs and Trade.

Sincerely yours,

John M. Leddy,
Director, Office of Economic Defense and Trade Policy.

(The following additional information was subsequently supplied:)

Department of State,
Washington, May 21, 1952.

Hon. John J. Sparkman,
Committee on Foreign Relations, United States Senate.

My Dear Senator Sparkman: I understand that inquiry has been made as to whether the previous statement of the Department of State, with reference to the significance of the provision concerning the General Agreement on Tariffs and Trade, in the various commercial treaties pending, before the committee, is applicable specifically to the treaty of friendship, commerce, and navigation with Denmark. The answer is in the affirmative. The additional material found in Article XXI, paragraph 3, of that treaty was included for a purely technical reason; namely, to provide for the situation in which Denmark, though not a member of the General Agreement on Tariffs and

Trade, was experiencing balance-of-payments difficulties. The additional material is comparable with the additional protocol attached to the treaty of friendship, commerce, and economic development with Uruguay.

As Mr. Linder stated in his testimony before the committee, the Department believes that the provision in the treaty with Denmark does not commit the United States as to participation or nonparticipation in the General Agreement on Tariffs and Trade and that Senate approval of this treaty cannot be regarded as constituting Senate approval of the general agreement.

Sincerely yours,

Raymond VERNON,
Acting Director, Office of Economic Defense and Trade Policy.

Senator Hickenlooper: The whole burden of my question is, are we backing into that by some involved interpretive provision in any of these trade treaties which would put us in a position where we have committed ourselves to the General Agreement on Tariffs and Trade?

Mr. Linder: The answer to that is, "No, sir".

General Purpose of the Treaties

Senator Hickenlooper: The general purpose of these treaties, as of all the other treaties of friendship, commerce, and so forth of a similar type, I take it, is to guarantee and assure equality of treatment of Americans, American nationals, on a reciprocal basis, that is, reciprocating equitable and fair treatment. These treaties contain certain specified safeguards which the respective nations agree to enforce so far as the activity of the American nationals are concerned in business and trade and so on.

Mr. Linder: And travel. That is correct.

Senator Hickenlooper: That is my understanding of the purpose of the treaties.

New Feature in Italian Protocol relating to Social-Security Benefits

Is there anything unusual that you could say in any way differentiates these particular treaties which are before us today in specific provisions from the general provisions of the treaties already in force, historically in force, between the United States and other nations?

Mr. Linder: I think there is only one.

Senator Hickenlooper: I mean, are there any innovations?

Mr. Linder: Yes. I think there is one in respect of the protocol which we are asking your approval on with Italy, and that exception I alluded to in my statement, and if I may quote it again I would say that Article VII of the supplementary agreement with Italy provides for the development of arrangements not provided for by Federal statute regarding totalization of social-security benefits.

I have here for submission a memorandum from the Federal Security Agency which sets that forth more completely than I am able to do. It is a technical problem, but in essence it provides for a consideration by each of the countries of the social-security benefits earned by any national within his own country. In other words, if an Italian had worked in Italy for 10 years and worked in the United States for 15 years there is an adjustment made so that he in effect gets the benefit, in calculating the payments due him by each country under social security, for his years of work in Italy as well as his years of work here, and vice versa.

That is the only provision that I believe differs substantially, except for improvements and tightening up both in language and in substance that is the natural result of, we hope, competent negotiation.

Senator Hickenlooper: What is the explanation or the justification of that provision, in view of the fact that manifestly at least now, and we assume for a long time in the future — at least now, and probably will be in the future — greatly in excess of the social-security benefits in any other country, so that someone, for instance from Italy, could come over here and work for 15 or 20 years and go back to Italy and retire very nicely on those benefits, with the tie-in under the Italian system.

Mr. Linder: I think, sir, that there has been a general movement all over the industrial world, particularly in Western Europe, to insure that workers who for one reason or other migrate from one country to another are not penalized, and in effect their social security is guaranteed. I think that this is an attempt — I believe it is an attempt — to do the same kind of thing, with respect to anybody who comes to this country, or any American who works abroad.

Senator Hickenlooper: I merely raise the suggestion that it may be an attempt to internationalize social security.

Mr. Linder: The Italians do not get the benefits on our scale for the period during which they worked in Italy.

Senator Hickenlooper: I would assume not.

Mr. Linder: They get some sort of combination of the two which has been worked out with each country paying a pro rata share. As I say, sir, in respect of the technical aspects of this, I would like to make available to the committee this statement prepared by the Federal Security Agency.

Senator Sparkman: Without objection, we will insert that in the record at this point.

(The statement referred to is as follows:)

STATEMENT PREPARED BY THE FEDERAL SECURITY AGENCY UNDER DATE OF FEBRUARY 14, 1952 — EXPLANATION OF THE SOCIAL-SECURITY PROVISIONS (ART. VII) OF THE UNITED STATES-ITALIAN SUPPLEMENTARY AGREEMENT, SIGNED ON SEPTEMBER 26, 1951

At present workers who have some coverage under the old-age and survivors insurance systems of more than one country may suffer losses in their benefit rights. In some cases the individuals involved may fail to meet the eligibility requirements of one or both systems because of gaps in their employment records, and thus no benefits at all may be payable. In order to eliminate these losses, various European countries have entered into agreements with each other in order to protect the benefit rights of workers who have employment in more than one country. The countries with which Italy has already concluded treaties include Belgium, France, and Switzerland. The United States thus far has no international agreement in operation.

While no figures are available on the extent of the movement of workers between the United States and Italy, it seems likely that the number of workers with coverage under the insurance systems of both countries is small. Nevertheless, coordination of the two systems to take care of these cases seems desirable, in order to prevent the hardship which may sometimes occur in the absence of coordination. As the number of cases will not be large, the total administrative burden should not be great.

Article VII of the supplementary agreement provides authority for coordinating social-insurance systems. Following are the major provisions of Article VII:

(1) The language of the agreement would authorise the immediate coordination only of the "principal old-age and survivors insurance system" of each country. The coordination could later be extended to special old-age and survivors insurance systems or to insurance systems providing protection against permanent disability.

(2) Service time under both systems would be combined and counted for determining eligibility for benefits under each system.

(3) Service which has already been credited under both systems, if any, would not be included in any combining of employment periods.

(4) Benefits based on combined service would be reduced to take account of the fact that all of the worker's service is counted under each program. This would be done by reducing each benefit amount by the ratio which the period of time spent under the other system bears to the total period of time spent under both systems.

(5) An individual might elect whether or not the coordination provisions shall apply to him.

(6) The agreement provides that if the Maintenance of Migrants' Pension Rights Convention of 1935 is adopted by both countries, the convention shall supersede any inconsistent provisions in the agreement. (The 1935 convention includes provisions establishing multilateral social-insurance coordination among the countries adopting that convention.)

While the agreement indicates that each system is to base benefits on combined periods of service, it does not specify how such benefit amounts are to be computed. It is contemplated that a method would be used which would not require a crediting under one system of wages received under the other, but only a crediting of service periods. By so doing, the administrative difficulties involved in such problems as the conversion of Italian currency into American, and the reverse, would be avoided.

The basic framework of the coordination is established in the agreement. Precedents already exist for this type of coordination, and we believe that no serious difficulties would be encountered in effectuating the agreement. Each country would bear whatever increased costs would arise under its system as a result of additional payments resulting from the agreement. While we have not been able to make cost estimates, because figures on workers with coverage under both systems are not available, we believe that the additional costs will be small.

The Federal Security Agency favors the coordination provisions contained in section VII of the agreement.

Protection of American Businessmen in Morocco

Senator Hickenlooper: I want to get back, Mr. Linder, if you know anything about this particular matter — it may not be in your bailiwick over there — to a matter which has been before this committee repeatedly in the past. It directly involves a treaty of commerce, trade, and friendship, and has been the occasion for two rather positive positions taken not only by this committee but by the Congress, and which according to my view, which may not be wrong, have been not only ignored but flouted by the Department. That is the Moroccan situation and what apparently has moved this Congress to consider that our American citizens in Morocco have not received the guaranteed equality of treatment under the existing treaty with Morocco. As I say, that may be wrong; I don't know. But is has been sufficiently presented so that it has been the occasion of two actions by this committee and two actions by the Congress on that line. But the situation has not seemed to be improved any.

Are you familiar with that Moroccan situation?

Mr. Linder: I am not familiar with it, sir. Maybe Mr. Vernon can speak to that.

Mr. Vernon: I think so.

Right at the moment, sir, as you no doubt know, that issue is before the International Court of Justice.

Senator Hickenlooper: Yes. And may I say that in my unschooled and probably inadequate opinion, it has no business before the International Court of Justice at all. I have had a little superficial examination of that, and at least in the absence of further proof I do not think it ever had any business being taken to the International Court of Justice, and I don't think we had any business joining in that matter in the Court of Justice. I mean, I just wanted to make my position clear so we will know from what standpoint we are arguing.

Mr. Vernon: Let me give just for a moment or two some of the considerations which led us to conclude that it was not easy to determine just what the rights of the Americans were. The American rights in Morocco accumulated out of a whole series of treaties going back to the eighteenth century. That is when the earliest one was. Some of the rights depend upon such a complicated issue as the following: Whether, if we have most-favored-nation rights, and if as a result of the most-favored-nation right we get a right which was expressly given to another country, such as England, and then the treaty by which England acquired certain rights is abrogated, do we continue to have the rights which we acquired indirectly through the most-favored-nation treatment, notwithstanding the abrogation of the U.K. treaty with Morocco.

There was also a problem of whether and to what extent custom and usage would give us a right which was not expressly stated in a treaty.

I sat down with our lawyers trying to trace back the effect of the accumulation of these principles upon our rights and came away with the very certain conviction, which was shared by anyone who had to go into this in detail, that at a minimum one could say our rights were complex and far from crystal clear.

We were also concerned that whatever the rights may have been as a result of these longer standing treaties, whether in fact recent agreements under the aegis of the Economic Cooperation Act modified them.

The result was a legal jumble complicated by the fact that it could be interpreted not in terms of domestic law but in terms of the rather more obscure provisions of international law.

In those circumstances we felt, and I think there is room for honest difference of judgment on this, that the best possible approach was to try to get a clarification from the International Court of Justice.

Factors in the French Moroccan Situation

Senator Hickenlooper: Our treaty was with Morocco, where the violations were alleged.

Mr. Vernon: That is correct.

Senator Hickenlooper: And France took it into the International Court.

Mr. Vernon: On behalf of Morocco. France has a relationship with Morocco which we have recognized by treaty, taking over the responsibility for Morocco's foreign relations; therefore she was within her rights, acting on behalf of Morocco and herself, to bring the suit.

Senator Hickenlooper: Nevertheless we have found, on two or three occasions, that the treaty has been violated a number of times. Isn't that true?

Mr. Vernon: I hesitate to rely on my judgment on this, or on my memory on this, because really the jumble of both fact and law is involved. One thing is clear, that a lot of things the Moroccans and French have done have not been right in equity or any abstract concept of justice that you might want to think of, and we have not by any means been happy about the treatment in certain respects that the Americans have received in Morocco. There is no question about that.

Senator Hickenlooper: May I ask you this: Have the Moroccans themselves ever refused to comply with the treaty, under their own steam? In other words, aren't the Moroccans perfectly willing to carry out the treaty, but the fact is the French, through their activities there, prevent the Moroccans from carrying out the treaty and the French superimpose special advantages to French people in Morocco in trade and otherwise which are not given to American citizens?

Mr. Vernon: That is an awfully difficult one to answer.

This is one of the reasons why it is so difficult to answer: I use this as an illustration rather than the whole group. The currency in which the French Moroccan trade is conducted is the French franc. The Moroccans may be perhaps willing that in imports into Morocco there should be no discrimination against dollars, but in a sense it is not their ox that is gored. The currency that is used for trading in the area is the French franc, and runs on the French franc by reason of, let us say, open imports into the French Moroccan area, and the resulting weakness in the French franc because of the loss of dollars, is a problem which hits France and not Morocco.

I suppose it is true to say that Morocco would be happy if the French permitted all the expenditures of French dollars that would be involved in free imports into Morocco, but I expect it is also true to say that their willingness to permit that is not a reflection of their willingness to extend us favors which France would not be willing to extend us, but rather a knowledge that it does not cost them anything to extend them to us.

Senator Hickenlooper: I understand there are some propositions in currency exchange which any country will have to meet equally, and should if there is equality of treatment, but it is the unusual and extraordinary export and import license system and the penalties which are put on American goods and American trade there which are not imposed upon the French, and all those things which are practical inhibitions and coercive things against Americans operating in Morocco, and treatment which is not accorded with the same severity to the French and perhaps one or two others with French favor.

Mr. Vernon: That is true, sir, and the reverse is true also, that there are areas in which Americans can do things that Frenchmen can't do. That is why in the first instance you have a large American colony trading in Morocco. There are certain products which the Americans may import freely which a Frenchman is prohibited from importing freely.

Senator Hickenlooper: Do the French prohibit the Frenchmen from importing them, or do the Moroccans?

Mr. Vernon: The French. That sounds rather curious, but the answer is simply this —

Senator Hickenlooper: Why should we be criticized for operating in an area we are privileged to operate in when the French could raise the restrictions and the French could operate in the same area if they wanted to, when it is within their control.

Mr. Vernon: That is true, sir, and what this reflects is the fact that there has been a recognition of American rights, which is the reason in the first instance why Americans are living there and trading there. In some situations the result has been that the French, in recognition of these special treaty rights, have permitted Americans to import a large list of products provided that the Americans found the exchange in some way or another, but have prohibited Frenchmen from importing the same products because they knew perfectly well the exchange the French would use would have to come out, directly or indirectly, of the French reserves in Paris.

Senator Hickenlooper: I merely mention the matter. It is not before this committee this morning, but I mention it wondering, after we do get into these treaties of friendship, just how they protect the rights of Americans that are actually guaranteed under the treaty before us. It is a question of where flow the benefits, and I would hope that they would be equitable and give equal benefits to nations that we treat with and, by the same token, that we would be utterly zealous in seeing that American nationals receive their full rights under the treaties we make.

I do not have any more questions.

Senator Sparkman: Thank you very much. You will stay here, Mr. Linder, I assume.

Mr. Linder: If you want me to I will be here.

Position of the National Foreign Trade Council

Senator Sparkman: It might be well to stay. I do not know whether some other questions will come up. It probably will not take very long. I suggest the letter from the National Foreign Trade Council, Inc., under date of May 8, 1952, appear in the record at this point and that it be followed by any comments which the Department of State may wish to submit:

National Foreign Trade Council, Inc.,
New York 6, N.Y., May 8, 1952.

Hon. John J. Sparkman,

United States Senate, Senate Office Building, Washington, D.C.

Dear Sir: The National Foreign Trade Council has been advised that you have been appointed by the chairman of the Senate Foreign Relations Committee, chairman of a subcommittee to take a testimony and make recommendation relative to the consent and advice to be given in respect of treaties heretofore signed on behalf of the United States with certain other countries. The treaties concerning which we wish to comment are:

Treaty of Friendship, Commerce, and Navigation between the United States and the Republic of Colombia

Treaty of Friendship, Commerce, and Navigation between the United States and Denmark
Treaty of Amity and Economic Relations with Ethiopia
Treaty of Friendship, Commerce, and Navigation between the United States and Greece
Treaty of Friendship, Commerce, and Navigation with Israel
Agreement with Italy supplementing the Treaty of Friendship, Commerce, and Navigation of 1948.

We have been advised further that you have designated Friday morning, May 9, 1952, as the time for hearings in this connection. We regret that it appears to be impossible for us to arrange for a witness to be present and testify at that time and in lieu thereof we are respectfully submitting in this communication our views in connection with those treaties.

TREATY OF FRIENDSHIP, COMMERCE, AND NAVIGATION BETWEEN THE UNITED STATES AND THE REPUBLIC OF COLOMBIA

Under date of October 9, 1951, we wrote Hon. Tom Connally, chairman of the Foreign Relations Committee, giving our views relative to the treaty with Colombia. For your ready reference, we attach hereto a copy of this letter.

The only additional comment which we would like to make with regard to this treaty is to make reference to the paragraphs in this letter entitled, respectively, "The Investment Clause" and "The Restrictive Business Practice Clause". Our views with respect to the investment clause and the restrictive business practice clause are the result of study since October 9, 1951, and were therefore not covered in our letter to Senator Connally.

TREATY OF AMITY AND ECONOMIC RELATIONS WITH ETHIOPIA

We respectfully urge that the Senate shall not give its favorable advice and consent to the above-entitled treaty. Our reasons for taking this position in respect of this treaty are as follows:

It is apparent from the content and phraseology of this treaty that the obstacles to mutual understanding on several phases of commercial relations were not overcome. In fact, it seems doubtful whether, at the present stage of Ethiopia's economic development, any satisfying mutual convictions or common ground for stipulations regarding private investment, can be found. Moreover, a recent canvass of representative members of the council has not developed any expression of positive interest in potential investment in that country. Therefore, it seems undesirable to dilute the pattern of our bilateral treaties by resorting in this case to such weak phrases as —

> "reasonable opportunity for the investment of capital, and for the establishment of appropriate commercial, industrial, or other enterprises . . ." or "nationals or companies . . . which are permitted to establish or acquire enterprises. . . ."

The objections to the second clause of Article VIII (1) and to the second sentence of Article VIII (4), are contained in the investment clause section.

While there are other features in this treaty which might prove of practical interest to American business, the aggregate advantage would not seem to outweigh the disadvantage of establishing an undesirable precedent in our treaty writing, at this juncture.

Since the objectionable weakness of this treaty is confined practically, to paragraphs 1, 4, and 5 of Article VIII, the Senate might consider giving its advice and consent to the ratification of this treaty, with a reservation deleting paragraph 4 of Article VIII in its entirety and the words "are permitted to" from the second line paragraph 5 Article VIII, and amending Article VIII (1) in accordance with the suggested provisions set forth in the section of this letter entitled "The Investment Clause".

AGREEMENT SUPPLEMENTING THE TREATY OF FRIENDSHIP, COMMERCE, AND NAVIGATION OF FEBRUARY 2, 1948, BETWEEN THE UNITED STATES AND THE ITALIAN REPUBLIC

We respectfully urge that the Senate give its favorable advice and comment to the above entitled agreement or treaty subject, however, to the following comment:

Article I of this pending agreement or treaty appears to be a somewhat watered-down version of the investment clause hereinafter dealt with. It is our belief that the comment in the paragraphs dealing with this matter would apply to Article I of this supplemental Italian treaty.

We also call attention to the fact that Article XVIII (3) of the Italian treaty of February 2, 1948, is the restrictive business practice clause hereinafter dealt with. It may be that if your committee is favorably disposed toward the recommendation contained in the memorandum attached to this letter entitled "Restrictive Business Practice Clauses in Proposed Treaties with Denmark, Greece, Israel, and Colombia" you would deem it appropriate in connection with the ratification of the supplemental agreement to request the modification of Article XVIII (3) of the original treaty.

TREATIES OF FRIENDSHIP, COMMERCE, AND NAVIGATION BETWEEN THE UNITED STATES AND DENMARK, GREECE AND ISRAEL

We respectfully urge that the favorable advice and consent of the Senate be given to the above-captioned three treaties of friendship, commerce, and navigation, subject, however, to the comment contained in our letter of October 9, 1951, dealing with the treaty with Colombia in so far as said comment applies to these treaties and subject further to the comments hereinafter contained relative to the investment clause and the restrictive business practice clause.

THE INVESTMENT CLAUSE

The clause referred to by this caption is Article VI of the treaty with Denmark, Article VIII of the treaty with Greece, and Article VI (4) of the treaty with Israel. The clause in the treaty with Denmark is less complete than the corresponding clauses of the other two treaties.

Reference is also made to the fact that the substance of this clause is contained in Article I of the agreement supplementing the Italian treaty. A corresponding clause is also to be found in the 1949 treaty with Uruguay (Art. IV), the 1950 treaty with Ireland (Art. V) and the 1951 treaty with Colombia (Art. VI (4)).

For ready reference we quote as follows the clause as it appears in the treaty with Greece:

> "ARTICLE VIII
>
> Neither party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other party in the enterprises which they have established or in the capital, skills, arts or technology which they have supplied; nor shall either party unreasonably impede nationals and companies of the other party from obtaining on equitable terms the capital, skills, arts and technology needed for economic development."

This provision is a version of a provision of the Bogotá agreement which has never been submitted to the Senate for ratification. The Habana charter of the International Trade Organization also contained a similar provision but this likewise has never received approval of the Senate.

The treaty committee of the National Foreign Trade Council has pointed out to us that this clause prohibits only "unreasonable or discriminatory measures . . ." which impair acquired rights and that the implication in the clause is that by measures which are neither unreasonable nor discriminatory the Government of one party to the treaty may properly impair within its territory the acquired rights of nationals of the other party to the treaty.

In our opinion, the importance of the defect in this clause as pointed out above is emphasised by recent developments in Iran. The Government of that country, because it apparently believed nationalization to be desirable as a national policy, enacted legislation to nullify the Government's contract with the Anglo-Iranian Oil Co. and thereby impaired, in fact actually destroyed, important acquired rights of that company in Iran.

A second dangerous implication in the phraseology employed is based upon the qualifying phrase "which they have supplied". As applied to capital, it suggests that only as to the amount of capital originally "supplied" by remittance of foreign funds, would the stipulations of this article provide any security. Historically, American direct investment has grown tremendously not only from funds remitted for investment, but by reinvestment of earnings within the foreign country. There should be no ambiguity or misunderstanding on the point that the investor's interests are to be protected as well in respect of this "plow-back" as in respect of the original "remitted" capital. That this is not an academic issue is clear from the discussions in progress with the Government of Brazil regarding the service of American investments in that country. Unfortunately, we have no modern commercial treaty with that nation; but if we had one reading as does the Bogotá stipulation quoted above, it would be a very precarious assurance of equitable treatment.

In view of what are felt to be deficiencies in clarity of this article, we respectfully urge that the investment clause as it appears in pending treaties now under consideration by the United States Senate be so amended as to give additional protection to rights acquired by American nationals in foreign countries. If the government of a foreign country having a treaty of friendship, commerce, and navigation with the United States of the post World War II type takes property of an American national for public purposes, it must pay due compensation with respect thereof. It is urged for your consideration that if the government of a foreign country takes the measures which would destroy or impair the rights or interests of an American national irrespective of the purposes underlying such destruction or impairment, corresponding payment should be made.

If the first part of the investment clause could be so modified as to read: "Neither party shall take measures that would impair the rights or interests within its territories of nationals and companies of the other party except on payment of prompt, adequate, and effective compensation" we feel that a desirable result would be accomplished.

We also feel that our balance of Article VIII of the treaty with Greece, reading: ". . . nor shall either party unreasonably impede nationals and companies of the other party from obtaining on equitable terms the capital, skills, arts, and technology needed for economic development" should be deleted in its entirety. It is to be assumed that it would be the United States which would be inhibited by this language from unreasonably impeding nationals and companies of the other party from obtaining on equitable terms the capital skills, etc., referred to. It seems to us that the meaning of the phrases "unreasonably impede" and "equitable terms" are so obscure and the implications thereof so broad as to make the inclusion of such a provision in a treaty entirely inappropriate and undesirable from the point of view of the United States. This language or a modification thereof is contained in the treaties with Colombia (Art. VI-4), Israel (Art. VI-4), Ethiopia (Art. VIII-4) and Italy (Art. I of the supplemental treaty with Italy). It does not appear in the treaty with Denmark.

THE RESTRICTIVE BUSINESS PRACTICE CLAUSE

The restrictive business practice clause to which we refer has, we believe, been incorporated substantially without change in all of the post World War II treaties of friendship, commerce, and navigation commencing with the 1948 treaty with Italy and it reads (treaty with Denmark, Art. XVIII-1) as follows:

> "1. The two parties agree that business practices which restrain competition, limit access to markets or foster monpolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination, agreement or other arrangement among such enterprises may have harmful effects upon commerce between their respective territories. Accordingly each party agrees upon the request of the other party to consult with respect to any such practices and to take such measures as it deems appropriate with a view to eliminating such harmful effects."

The National Foreign Trade Council believes firmly in the principles of private enterprise and business conducted on a competitive basis. Until recently it had viewed the restrictive business practice clause as being merely a condemnation of practices contrary to the letter and spirit of existing American law.

More recent study of this provision and particularly of the second sentence has caused us to revise our ideas. At the present time, taking into consideration the fact that treaties duly entered into become under the Constitution the supreme law of the land, and bearing in mind the delicate relationship established by the Constitution between the powers of Congress and the powers of the Executive, we have come to have real apprehension that this clause as now drafted may result in transferring to the executive branch of our Government certain powers heretofore reserved to Congress.

Attached hereto please find a memorandum dealing with this subject in some detail which we believe will be of interest to your committee.

Respectfully submitted.

William S. SWINGLE,
President.

RESTRICTIVE BUSINESS PRACTICE CLAUSES IN PROPOSED TREATIES WITH DENMARK, GREECE, ISRAEL, AND COLOMBIA

Article XVIII-1 of the proposed treaty of friendship, commerce, and navigation with the Kingdom of Denmark, now under consideration by the Committee on Foreign Relations of the Senate of the United States, contains a provision designed to eliminate harmful effects upon commerce between the United States and Denmark arising from business practices which restrain competition, limit access to markets or foster monopolistic control as follows [1]:

> "ARTICLE XVIII
>
> 1. The two parties agree that business practices which restrain competition, limit access to markets or foster monopolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination, agreement, or other arrangement among such enterprises may have harmful effects upon commerce between their respective territories. Accordingly, each party agrees upon the request of the other party to consult with respect to any such practices and to take such measures as it deems appropriate with a view to eliminating such harmful effects."

The second sentence of the provision quoted above gives cause for particular concern in that it would bind the United States "to take such measures as it deems appropriate with a view to eliminating such harmful effects". There is at least room for the construction that each party commits itself to enact measures which will eliminate the harmful effects of restraints on competition, leaving only to the discretion of the parties the choice of the measure or measures which will be appropriate for this purpose. Since a treaty constitutes the supreme law of the land [2], it may certainly be argued that the United States could be held liable before an international tribunal should it fail to take some measure or measures, whether by act of Congress or by executive action, to carry out the mandate of the treaty with Denmark [3].

Presumably, the consultation agreed to under Article XVIII-1 would take place with the executive branch of our Government [4] and the executive branch, rather than Congress, would be directed to take "such measures as it deems appropriate with a view to eliminating such harmful effects". Thus read, it may be argued that the provision in question would result in a surrender by Congress to the executive branch of our Government of a portion of its powers regulating our foreign commerce which is now entrusted to Congress under Article II of the United States Constitution. Following this line of argument to its logical conclusion, it seems clear that the Executive would not be required to seek congressional approval of measures which it deemed appropriate to the extent that such measures were within the general

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[1-13] Footnotes not reproduced.

power of the Executive to carry into effect. For example, the administration could through the Office of International Trade impose export restrictions, thus forcing industry to abandon or change any practice which had been a subject of complaint.

Again, following this line of argument, the executive branch in fulfilling the obligations assumed under the proposed treaty, would not in any way be limited by the existing antitrust laws of the United States [5], but in fact the executive branch would be committed to take such measures as it might deem appropriate with a view to eliminating harmful effects from "business practices which restrain competition, limit access to markets, or foster monopolistic control . . ." whether or not such practices in a particular case were in violation of the antitrust laws of the United States. In effect, therefore, the executive branch of the Government would be committed to different criteria from the existing criteria applicable to American enterprises at home or abroad.

If a treaty were not involved, there is little question but that it would be unconstitutional for Congress to delegate its antitrust powers in the manner contemplated [6]. However a treaty made under the authority of the United States becomes the supreme law of the land [7] and there is support for the proposition that that which congress may not do under the Constitution, i.e., the delegation of its power to regulate commerce, may still be accomplished pursuant to a treaty entered into "under the authority of the United States" [8].

The full import of the congressional surrender of power over foreign commerce which is inherent in Article XVIII (1) of the proposed treaty is perhaps more pointedly revealed by the potential impact of this article on existing legislation. There are in effect today a number of laws enacted by Congress which grant some form of antitrust exemption to activities affecting our foreign commerce which might be construed to be restrictive practices within the meaning of Article XVIII (1). For example, the Capper-Volstead Act [9] permits persons engaged in the production of agricultural products to market such products in interstate and foreign commerce by means of marketing agencies in common. Let us suppose the Government of Denmark were to make the contention that agreements establishing such collective marketing agencies pursuant to the Capper-Volstead Act were adversely restricting trade between the United States and Denmark. Under Article XVIII (1) the executive branch of our Government, according to the argument stated above, would be obligated to take measures to eliminate the harmful effects of such restrictive practices, including, if desired, the withdrawal of approvals previously extended to the collective marketing agreements. Since the provisions of the treaty suspersede the laws of Congress previously enacted [10], the Executive action would overrule the prior congressional determination that such collective marketing agreements were not harmful to our foreign commerce and should be permitted by law [11].

If, on the other hand, it is not intended to interfere with the power of Congress to regulate our foreign commerce or to open the way to the nullification of the congressional enactments described above (and there is no indication of a contrary intent), Article XVIII (1) should be amended so as to eliminate any question on this score. For that purpose revision along the following lines is suggested:

"Accordingly each party agrees upon the request of the other party to consult with respect to any such practices and to take such measures as it deems appropriate with a view to eliminating such harmful effects: *Pro-*

vided, however, That in order to accomplish the aforesaid purposes the United States of America shall be obligated to take only measures heretofore or hereafter enacted by Congress."

While existing treaties of friendship, commerce, and navigation with Italy (Art. XVIII) and Ireland (Art. XVIII (1)) contain similar "restrictive business practice" provisions [12], it is not too late to prevent a more widespread use of the clause as originally drafted. The amendment suggested above may, as a matter of first impression, appear to be too one-sided in favor of the United States. However, the United States is the only country in the world, with the possible exception of France, where a treaty can become a part of the supreme law of the land without the necessity of implementing laws enacted by the legislative body [13]. It seems necessary, therefore, by specific reference in the treaty clause to make it clear that the measures to be adopted by the United States must be those which are enacted by Congress.

October 9, 1951

Hon. Tom Connally,
Chairman, Foreign Relations Committee,
United States Senate, Washington, D.C.

Dear Sir: The National Foreign Trade Council, on the basis of a report from its treaty committee, has reviewed the provisions of the Treaty of Friendship, Commerce and Navigation between the United States and the Republic of Colombia executed April 26, 1951, which is now before the Senate Foreign Relations Committee and desires respectfully to urge that the Senate give its advice and consent thereto as provided by the Constitution. The National Foreign Trade Council feels that the State Department should be commended for its activity in negotiating a treaty of friendship, commerce and navigation the provisions of which are in general along lines meeting in a substantial manner the views of the members of the council.

On the assumption that provisions of the treaty with Colombia will serve as a model for corresponding provisions in other treaties to be negotiated, the council's treaty committee has formulated as to certain provisions thereof the following suggestions the adoption of which it is believed would be desirable:

Article III, paragraph 1, and Article VI, paragraph 1. — The words "in no case less than that required by international law" should be added at the end of each of these paragraphs. This phrase has appeared in most other commercial treaties to which the United States is a party and in the judgment of your committee is important in that it suggests what we believe to be a significant principle, namely, that international law does require governments to give protection of the person and the property of nationals in another country.

Article III, paragraph 2. — The words "of his choice" should be added at the end of this paragraph. This paragraph indicates that a national of one country accused of crime in the other country may enjoy the right, among others, of obtaining "the services of competent counsel". Obviously he should have the right to elect such counsel.

Article VII, paragraph 1, and Article VIII, paragraph 1. — The proposal of the National Foreign Trade Council Committee on Insurance relating to the specific inclusion of "insurance" in the enumerated enterprises entitled to national or most-favored-nation treatment should be approved and accepted. The insurance committee advised that specific reference to insurance not having been made in existing treaties with some countries, the State Department has been unable to make adequate representations on behalf of American companies doing business in such countries when discriminatory laws or practices were adopted and enforced.

Article IX, paragraph 4. — Neither the use of the words "particular types of activity" nor the reference to Article VIII, paragraph 1, is clear. It is recommended that this paragraph be clarified.

Article X. — This article does not but should deal with copyrights as well as trademarks, etc. (It was recommended that, if Colombia is not a member of the International Conference for the Protection of Industrial Property, it should become a member.)

Article XIV. — It is suggested that a new paragraph, reading as follows, be added to follow paragraph 2 of this article:

> "Neither party shall impose any prohibition or restriction or discriminatory tax preventing or hindering the importer or exporter of goods of either country from obtaining insurance on such goods in transit in companies of their own choice."

Article XXVI, paragraph 4. — This paragraph provides for terminating on one year's written notice the provisions of paragraph 1 of Article XIV assuring most-favored-nation treatment as to customs duties and other related matters. It therefore avoids the necessity of denouncing the entire treaty because of a change in policy affecting customs duties which might be inconsistent with the relevant treaty provision. The treaty committee believes that the freedom of action thus granted to both parties is desirable and should be commended.

The committee would also take this opportunity to refer again to the need for treaty provisions specifically assuring American enterprises operating abroad the right to secure entry for and utilise the services of American nationals in administrative, technical, and confidential capacities. This subject was discussed in a letter to Senator Connally from the council, dated April 23, 1951, as well as in a letter to the former chairman, Senator Vandenberg, dated June 1, 1945.

Very truly yours,

(Signed) Robert F. Lores,

Chairman, National Foreign Trade Council.

(Communications of the Department of State relative to the foregoing letter from the National Foreign Trade Council:)

May 15, 1952.

Hon. John J. Sparkman,

Committee on Foreign Relations,
Unites States Senate.

My Dear Senator Sparkman: There is enclosed herewith a memorandum concerning the pending Treaty of Amity and Economic Relations with Ethiopia, as requested during the course of hearings before your subcommittee last Friday, May 9, in light of the objection expressed by Mr. Swingle, president of the National Foreign Trade Council, in his letter of May 8 to you. The memorandum has been prepared for the record.

Comments regarding the points raised in Mr. Swingle's letter with reference to certain clauses in the pending treaties with Colombia, Denmark, Greece, and Israel and the supplementary agreement with Italy, will be forwarded separately.

Sincerely yours,

Harold F. LINDER,
Acting Assistant Secretary for Economic Affairs.

Enclosure: Memorandum with attachment.

MEMORANDUM

There follow the State Department's comments upon the letter of May 8, 1952, from Mr. Swingle, president of the National Foreign Trade Council, to Senator Sparkman, regarding the pending treaty of Amity and Economic Relations with Ethiopia.

The State Department considers the treaty with Ethiopia to be an outstandingly good one, in all the circumstances, and particularly urges its approval. It contains provisions of great value (1) to our diplomatic and consular establishments in Ethiopia, certain of which, as indicated in one of the exchanges of notes attached to the treaty, go beyond what the Ethiopian Government is normally prepared to grant; (2) to our citizens in Ethiopia, the exchange of notes regarding the special rights of Americans before Ethiopian justice being especially noteworthy; and (3) to the growth of our trade and the development of other American interests in Ethiopia. As the first treaty of the sort that Ethiopia has concluded with any nation since the war, it may be regarded as having considerable political significance.

The objection of the National Foreign Trade Council to this treaty seems to be based principally or entirely on the ground that it does not go far enough in obligating Ethiopia to receive American investment. However, this lack of commitment concerning the entry of investment capital was not, as suggested in Mr. Swingle's letter, a failure to overcome an obstacle to mutual understanding. On the contrary, it was evident that, in Ethiopia's existing circumstances, Ethiopia could not be expected to undertake treaty limitations upon her right to regulate the entry of foreign investment. No benefit was to be gained from attempting in this treaty to force Ethiopia to accept American investment, especially as no American would likely wish to venture his capital in Ethiopia anyhow except with the express sanction of the Ethiopian Government. The treaty does, of course, contain valuable assurances, of the sort normally sought in one of these treaties, concerning the protection of investments which are actually made now or hereafter in Ethiopia.

The State Department does not regard this treaty as at all "diluting the pattern of our bilateral treaties", as suggested in Mr. Swingle's letter. It is specially designed for a country like Ethiopia; not for a country of Western Europe. It is to be judged by its many positive accomplishments in relation to Ethiopia rather than by its omissions. As it stands, it is a stronger treaty than most nations commonly make with one another. It represents a great advance over our existing commercial treaty (that of 1914) with Ethiopia, and should serve well until Ethiopia reaches the stage of being able to enter into a still more ambitious treaty.

Department of State,
Washington, May 16, 1952.

Hon. John J. Sparkman,
Committee on Foreign Relations,
United States Senate.

My Dear Senator Sparkman: There is enclosed a memorandum, as requested during the course of the hearing held by your subcommittee on Friday, May 9, concerning questions raised by Mr. Swingle, president of the National Foreign Trade Council, in his letter of May 8 to you with reference to the pending treaties of friendship, commerce, and navigation with Colombia, Denmark, Greece, and Israel and the supplementary agreement with Italy. A memorandum concerning the National Foreign Trade Council's views on the treaty with Ethiopia has been sent under separate cover.

This Department gives most careful consideration to the suggestions which the Foreign Trade Council offers from time to time with a view to making the treaties a more effective instrument of American foreign policy. However, as will appear from the attached memorandum, we are unable to concur in the advisability of the changes which the council now proposes be made in the several instruments pending before the committee. Agreement on these treaties has been reached after lengthy and often difficult negotiations conducted at the instance of the United States Government and on the basis of United States proposals; and it would not appear advantageous to risk reopening negotiations for the purpose of securing nonessential changes, especially in clauses already appearing in hitherto approved treaties. None of the changes suggested by the council appears necessary, and at least one appears to be contrary to the interests of the United States.

If there are any further materials you might require, please do not hesitate to call on us, for we are most anxious to be of whatever assistance we can in facilitating the committee's consideration of these treaties.

Sincerely yours,

Harold F. LINDER,
Acting Assistant Secretary for Economic Affairs.

MEMORANDUM

There follow comments of the State Department on the two points raised in the letter of May 8 from Mr. Swingle, president of the National Foreign Trade Council, concerning the pending treaties of friendship, commerce, and navigation with Colombia, Denmark, Greece and Israel, and the supplementary agreement with Italy.

So-called investment clause — The quoted provision, as found in Article VIII of the treaty with Greece, is one of the least of many clauses relating to investment in the treaty. It first occurred, in a larger form, in the 1949 treaty of friendship, commerce, and economic development, with Uruguay (Art. IV), heretofore approved by the Senate; and it was not then criticized by the National Foreign Trade Council in the letter which it sent to the Senate, recommending approval of the Uruguay treaty (letter to Senator Connally, from Mr. Thomas, then president of the organization, dated March 6, 1950). The Uruguay version, however, contained one passage which has been abandoned in the current treaties, in light of further study and in response to a particular objection subsequently raised by the National Foreign Trade Council; namely, a stipulation that neither party should "without appropriate reason deny opportunities and facilities for the investment of capital by nationals and companies of the other party".

The State Department does not agree with the objections or the recommendation contained in the National Foreign Trade Council's letter.

The National Foreign Trade Council recommendation, as set forth in bottom of page 6 of its letter, is that the treaty rule requiring prompt, just, and effective payment of compensation for expropriated property, including interests in property (as, Art. VII, para. 3, of the Greek treaty), be extended to require compensation in the event of any "measures that would impair the rights or interests" of any kind which nationals of one country may have in the other. This Department does not believe that this recommendation represents a commitment which the United States could, for its part, undertake. This is for the reason that such a provision would appear to require compensation in circumstances in which the United States Government does not under the Constitution and laws of the United States pay compensation. While the United States, of course, pays compensation for property and property interests which it takes, it does not pay compensation for all "losses" which Government action may cause. For example, the Federal Government does not pay compensation for so-called "consequential damages" occasioned by a condemnation of property, notwithstanding that the condemnation may cause the private owner considerable losses in the nature of consequential damages. There is no obligation upon the United States Government to compensate a distiller for the loss of business brought on by a prohibition law; nor a utility company for the economic consequences of the formation of a Government-supported rural electrification system; nor individuals or business concerns for the loss of prospective profits resulting from price control laws. There are many other instances of Government-caused losses, or alleged losses, which the United States Government under the Constitution and laws declines to make good. The State Department cannot recommend a treaty provision which would go beyond established United States policy in this connection and grant foreign nationals more favorable treatment than citizens receive in the United States.

The Department of State recognizes the limitations of the provision represented by Article VIII of the Greek treaty. However, it is believed to serve a useful purpose in that it affords one more ground, in addition to all the other grounds set forth in the treaty, for contesting foreign actions which appear to be injurious to American interests. A given measure of a foreign government might, for example, be fully consistent with the national treatment or most-favored-nation treatment rules of the treaty, and also short of expropriation, but yet arbitrary and unreasonable as it affected some vested American interest in the country concerned. In that event, the only treaty ground for protest might be general language such as found in Articles I and VIII of the Greek treaty. It remains, however, that the real protection of an American investment abroad rests for the most part on the more specific provisions of the treaty; the clause in question does not qualify these more specific provisions, but is merely something additional.

The concluding passage of the provision (relative to impediments on the outflow of investment capital, as quoted on the top of page 7 of the letter in reference) is not phrased in a way to create a source of embarrassment to the United States. The commitment is merely not unreasonably to impede the outflow of free enterprise investment capital. There is no undertaking positively to encourage the outflow of capital or to supply any capital. All commitments in the treaty are, on the other hand, subject to a broad national security reservation. This passage, therefore, would appear to be a moderate assertion of this Government's favorable attitude toward the private investment process which it is among the major aims of the treaty as a whole to foster and protect.

Restrictive business practices clause — This clause, which has appeared in several previously approved treaties, is designed to enlist the cooperation of foreign governments in the congressionally approved efforts of this Government to reduce and remove the adverse effects of cartels and other restrictive practices on international trade.

It will be observed that the clause is not self-executing, and it is also cautiously worded otherwise. The commitments are (1) to consult, i.e., to hold discussions, and (2) to take such action as each party deems appropriate, in its own discretion and in its own way, with a view to eliminating the harmful effects of defined practices on international trade. While the holding of consultations would be an executive function, any action that the United States might see fit to take would be the normal combination of congressional, executive, and judicial action that exists apart from the treaty. The clause has, furthermore, been drafted in such manner as to avoid conflict with the Webb-Pomerene Act and the other enactments which represent exceptions to the basic antitrust law of the United States. The clause is not regarded as creating new substantive antitrust law or new procedures of antitrust enforcement in the United States.

It may be stated categorically that the restrictive business practices clause is not in any way designed to enhance executive power or to alter established congressional-executive-judicial relationships in the formulation and execution of antitrust policy. In the State Department's view, the Executive would be bound, in carrying out the clause, to proceed in conformity with statutes duly enacted by the Congress; and there is no intent to authorize the contrary. A proviso spelling out the internal processes by which the United States acts is therefore unnecessary; it would also appear to be inappropriate in an international instrument, since it is not the concern of a foreign government.

(The following additional comments of the National Foreign Trade Council were subsequently received and incorporated in the record:)

National Foreign Trade Council, Inc.,
New York 6, N.Y., May 12, 1952.

Hon. John J. Sparkman,

United States Senate,
Senate Office Building, Washington, D.C.

Dear Sir: . . .

With reference to Article VII of the supplementary treaty with Italy we enclose a memorandum in relation to the social security benefits under the laws of the two countries. We believe this may be helpful to your committee in the study of this provision.

Very truly yours,

William S. Swingle,
President.

MEMORANDUM ON ARTICLE VII OF THE SUPPLEMENTARY TREATY WITH ITALY

Article VII of the proposed Italian agreement provides for combining coverage under the social-security systems of the two countries in accordance with certain broad principles which do not spell out any of the details of how such a combining provision would operate in actual practice. For some time we have been trying to ascertain whether or not the Federal Security Agency has developed any concrete plans for implementing the agreement if and when it is ratified. Our efforts in this direction have been unproductive. Without such information, it is impossible to evaluate the effect of the proposed agreement on our domestic social-security program.

The following example will illustrate the type of questions in connection with any such proposal. Assume that an Italian workman enters the United States after 15 years of coverage under the Italian social-security law. He obtains employment in the United States and dies, leaving a widow and children, after working for only 1 year in employment covered by the Social Security Act. Ordinarily, in order for his widow and children to be eligible for survivor benefits, the wage earner must have had insured employment in 6 of the 13 quarters preceding his death. Would the employment under the Italian scheme be considered in determining the eligibility of the widow and children under the United States Social Security Act? If survivor payments are to be made under both laws, how would the proportion of the respective payments be determined?

It seems to us that it is almost impossible to develop a fair and equitable arrangement for combining coverage under United States and foreign social-security schemes which are so radically different in their concepts. Lacking any information as to how the proposed agreement would be implemented, however, makes it extremely difficult at this stage to do more than raise these questions and to insist on complete information as to the types of cases in which the agreement would be applicable and the mechanics which would be employed in its operation.

It should also be noted that this is a precedent-setting agreement, since the President's message states, "Another provision incorporated for the first time in an agreement to which the United States is a party is that contained in Article VII". This raises the question as to whether or not it is the policy of the United States to extend this type of agreement to other countries. This fact alone should warrant the Senate Foreign Relations Committee making careful and exhaustive investigation into the possible implications of such agreements for our domestic social-security program.

EXPLANATION OF HOW THE UNITED STATES-ITALIAN TREATY MIGHT OPERATE IN CERTAIN TYPES OF CASES — MAY 15, 1952

The provisions of the United States-Italian agreement establish the general method of coordinating benefits which is to be used. The following is a brief explanation prepared by the Social Security Administration as to how benefit coordination might be brought about as regards the old-age and survivors insurance benefits of the two countries.

There would be eligibility for coordination only if (1) the worker had at least 3 years of employment after 1937 under each system, and (2) the worker gains insured status under one or both programs by reason of the combination of periods of service.

When there is eligibility for coordination, the worker, or his surviving dependents, may elect whether or not to have the coordination provisions apply. If coordination is elected, the worker's combined service periods would be used in determining his benefit rights, or those of his survivors, under each system.

Each system would use combined periods of service in determining eligibility for benefits. Each system would use its own qualifying requirements in determining who could receive benefits. While each system would determine benefit amounts on the basis of combined service, it would not be necessary to transfer information about the level of earnings — transfers of records of service would be sufficient.

After the initial benefit computation on the basis of combined service, each system would reduce the benefit according to the relative amounts of service under the two systems.

Attached are Appendix I, giving the insured status requirements of the two programs, and Appendix II, giving illustrations of cases which might arise under coordination. While the illustrations go into some detail in describing the benefits payable under the United States system, they present only in rough outline enough information about the benefits payable under the Italian system to show how the basic principles would operate.

The illustrative cases in Appendix II are organized according to the insured status of the worker before and after the totalization of his periods of service under the two systems. There are nine possible types of cases which may arise, based on the effect of the coordination upon the worker's insured status. The following table shows these nine categories of cases:

[Table not reproduced]

As shown in the table above, group eight cases are the only cases in which benefits can be paid as soon as the coordination becomes effective. The earliest date for the beginning of benefit payments in any of the other groups of cases is July 1957. The reason why these benefit payments cannot be made earlier is explained for each type of case in Appendix II, under "Comments".

Appendix II contains illustrations of cases which might arise in each of the groups in which there might be eligibility for benefits under coordination.

The coordination plan is not expected to affect in any substantial manner the actuarial status of the insurance system. While it is not possible to estimate the cost of coordination to either the Italian or the United States system, it is expected that, since only a very few cases will be affected, the cost will be negligible. Whatever small additional expenditures may be involved would be justified in view of the contribitions paid on behalf of the persons affected, who now contribute to the United States system but do not work long enough to draw benefits.

APPENDIX I. — INSURED STATUS REQUIREMENTS OF THE ITALIAN AND UNITED STATES PROGRAMS AS OF MAY 7, 1952

Insured status requirements of United States program

[Table and explanatory text not reproduced]

INSURED STATUS REQUIREMENTS OF ITALIAN PROGRAM

For old-age benefits under the Italian system, the insured status requirement is taken as being 15 years of coverage. The Italian insured status requirement for survivor benefits is taken as being a total of 5 years of coverage, with the additional requirement that 1 year's coverage must have been in the 5 years immediately preceding death. These requirements follow the general approach of the actual, more detailed provisions of the Italian system. (It will be noted that the "recency" test of the Italian program for survivorship protection is an additional requirement which must be met, while the recency test of the United States system is an alternative method of meeting the insured status requirements of the program.)

APPENDIX II. — ILLUSTRATIVE CASES SHOWING OPERATION OF COORDINATION UNDER UNITED STATES-ITALIAN TREATY

Group 2. Not insured under either system without coordination, insured under the Italian system with coordination:

B works for 3 years, from 1950 through 1952, under the United States system. He works for 4 years, from 1960 through 1963, under the Italian system. He dies in July 1966.

Without coordination, B cannot of course meet the length of service requirement of either system. With coordination his 7 years of combined service are sufficient to meet the length of service requirement of the Italian program but not of the United States program. (As shown in the preceding table 7¾ years would be required under the United States system; the alternative requirement for limited survivorship protection, as noted, would be 1½ years of employment during the 3 years immediately preceding his death.)

With coordination, the benefits for B's survivors under the Italian system would first be computed based on the 7 years of service under the two systems. They would then be reduced to four-sevenths of this amount, as four-sevenths of B's service was under the Italian system.

Comment. — It might be noted that there could be no cases in group 2 until after June 1963, and then only in survivor cases. Group 2 cases could never arise before July 1963 because a worker who meets the 3-year qualifying requirements would also be able to meet the United States insured status requirement which applied before that date. There could be no retirement cases in group 1 even after the middle of 1963, as anyone meeting the Italian length of service requirement could also meet that of the United States system. There could be some survivor cases after June 1964, as after that date the survivorship requirements of the Italian system would be more liberal in some ways than those of the United States system.

Group 3. Not insured under either system without totalization; insured under the United States system, but not the Italian system, with totalization:

C works under the Italian system for 6 years, from 1944 to 1949. He works under the United States system for 6 years, from 1956 through 1961. He reaches age 65 and retires in January 1966.

As the length of service requirement under the United States system is 7½ years for an individual reaching age 65 in January 1966 C is not insured under the United States system without coordination. He is not of course insured under the Italian system without coordination. With coordination the 12 years of combined service would still not meet the Italian requirement of 15 years, but would meet the United States requirement.

It is assumed that C received wages of $200 per month while under the United States system, and that he had a wife aged 65 or over when he retired. The amount of his monthly old-age benefits under the United States system based upon totalized service would be $40 under the initial computation, and his wife's benefit would be $20. The 1951 new start would be used in computing his average monthly wage and benefit amount in the computation. As C's Italian service is before 1951 it has no effect on the computation of the average monthly wage, as periods before 1951 were not used in the computation.

C's benefit and that of his wife are then reduced to one-half of the amount as originally computed, as one-half of his total service was under the United States system. The reduced monthly benefit for C is $20, and his wife's benefit is $10. These amounts would be paid under the United States system.

Comment. — The Social Security Administration proposed that when the new start is used in determining the average monthly wage, under the United States system, the benefit reduction under the United States system should be based on the relative amounts of service after January 1, 1951, unless insured status depends on the use of Italian service before January 1, 1951, in which case the reduction would be based on the relative lengths of service periods after January 1, 1937. As C's insured status does depend upon Italian service before 1951 the reduction in this case is based on the total service under the two systems after January 1, 1937.

Group 3 cases could not arise before the middle of 1957, as a worker with the required 3 years of service under the United States system would meet the insured status requirements of the program until that date. After that date there would be both requirement and survivor cases falling in group 3.

Group 4. Not insured under either system without coordination; insured under both systems with coordination:

D works for 4 years, from 1952 through 1955, under the United States system. He works for 4 years, from 1956 through 1959, under the Italian system. He dies in January 1960.

Without coordination, D cannot meet the insured status requirements of either system. (As shown in the table, the United States requirement for a worker who dies in January 1960 would be 4½ years.) With coordination, D would meet the insured status requirements of both programs.

The benefits for D's survivors under the Italian system would first be computed based on the combined 8 years of service under the two systems. They would then be reduced to one-half of this amount, as one-half of D's service was under the Italian system.

It is assumed that D received wages of $200 per month while under the United States system, and that he was survived by a widow and two children under age 18. The amount of the monthly benefits based on combined service would be, under the initial computation: widow, $44.30; first child, $36.90; second child, $36.90. The 1951 "new start" would of course be used in computing his average monthly wage in the computation. The benefit amounts would then be reduced to one-half of the amounts as originally computed, as one-half of D's total service was under the United States system. The reduced benefits, as payable to D's survivors, would be: widow, $22.20; first child, $18.50; second child, $18.50.

Comment. — Group 4 cases could not arise before the middle of 1957. (As in group 3 cases, a worker with the required 3 years of service under the United States system would meet the insured status requirements of this program until that date.) After June 1957, both retirement and survivor cases could arise in group 4.

Group 6. Insured under Italian system only without coordination; insured under both systems with coordination:

F works under the Italian system for 20 years, from 1951 through 1970. He works under the United States system for 7 years, from 1971 through 1977. He reaches age 65 and retires in January 1978.

F meets the Italian length of service requirement without coordination. He does not meet the United States requirement (10 years for workers reaching age 65 after 1970) without coordination, but does meet the United States requirements with coordination.

Without coordination, F would qualify for benefits under the Italian system based on 17 years of service. With coordination, he would qualify for benefits computed on the combined total of 24 years of service and then reduced to seventeen twenty-fourths of this amount, as seventeen twenty-fourths of F's service was under the Italian system.

It is assumed that F received wages of $200 per month while under the United States system, and that he had a wife aged 65 or over when he retired. The amount of the monthly benefits based on combined service would be, under the initial computation: F's own benefit, $65; his wife's benefit, $32.50. The benefit amounts would then be reduced to seven twenty-fourths of the amount as originally computed, as seven twenty-fourths of F's total service was under the United States system. The amounts of the reduced benefits would be: F's own benefit, $19; his wife's benefit, $9.50. These are the benefits which would be paid under the United States system.

Comment. — Group 6 cases could not arise until July 1957, when the insured status requirements of the United States system first exceed 3 years. After that date, both survivor and retirement cases could fall in this group.

Group 8. Insured under United States system only without coordination; insured under both systems with coordination:

H works under the Italian system for 10 years, from 1937 through 1946. He works under the United States system for 6 years, from 1947 through 1952. He reaches age 65 and retires in January 1953.

Even without coordination, H is insured under the United States system, as the length of service requirement for a worker who retires in January 1953 is but 1½ years of service. With coordination, his combined total of 16 years of service enables him to also meet the Italian requirements.

With coordination, F would qualify for benefits under the Italian system computed on the combined total of 16 years of service, and then reduced to ten-sixteenths of this amount, as ten-sixteenths of H's service was under the Italian system.

It is assumed that H received wages of $200 per month while under the United States system, and that he had a wife aged 65 or over when he retired. The amounts of the monthly benefits based on combined service would be, under the initial computation: H's own benefit, $65; his wife's benefit, $32.50. This computation would be based on the 1951 "new start", and H's average monthly wage would be based on his wages in 1951 and 1952.

In this case, there would be no reduction in the benefit amounts as originally computed, if our suggestions are adopted. As H did not depend on Italian service before 1951 for insured status, the reduction, if any, would be based on the relative service periods after 1950. However, as there is no Italian service after 1950 in this case, there would be no benefit reduction.

Comment. — This group of cases is of particular interest, as it is the only type of case, under our proposals, in which benefits could be paid under coordination before the middle of 1957. Thus, for the first few years under the agreement, the only benefits payable by reason of the coordination would be those payable under the Italian system.

In the case of H the amounts of the benefits payable under the United States system were not affected. However, the benefits payable under the United States system in group 8 cases will ordinarily be lowered if there was Italian service after 1950, or if the worker's insured status depends on Italian service before 1951.

Senator Sparkman: Mr. Roy Leifflen?

Mr. Leifflen: Yes, sir.

Senator Sparkman: Will you come around, Mr. Leifflen?

For the record, will you give your name and the capacity in which you appear, to the reporter?

STATEMENT OF ROY LEIFFLEN, REPRESENTING THE ASSOCIATION OF MARINE UNDERWRITERS OF THE UNITED STATES

Safeguards Against Discrimination in Marine Insurance Advocated

Mr. Leifflen: My name is Roy Leifflen, and I am appearing as counsel for the Association of Marine Underwriters of the United States, which is an organization comprised of 35 of the leading insurance companies engaged in the marine-insurance business in this country. I have a prepared statement in support of the position of the American marine underwriters, that the United States should, in treaties of commerce and friendship, provide adequate safeguards against the growing prevalence of discrimination in the field of marine insurance which prevents American marine-insurance companies from competing for the marine insurance on imports and exports.

In connection with the treaties under consideration today, insofar as we know, only Colombia and Italy have discriminatory laws or practices, but we are primarily interested in setting a pattern because it seems to us it is far better to include a prohibition against discrimination in a commercial treaty rather than to wait until a country enacts discriminatory laws or regulations and then attempts by diplomatic negotiations to have them abrogated.

I have already submitted copies of my statement, Senator, but I will be glad to read it if you wish.

Senator Sparkman: It is not necessary at all. The statement will be printed in full in the record.

(The statement of Mr. Roy Leifflen is as follows:)

STATEMENT ON BEHALF OF THE ASSOCIATION OF MARINE UNDERWRITERS OF THE UNITED STATES

This statement is submitted in support of the position of American marine underwriters that the United States should in treaties of commerce and friendship provide adequate safeguards against the growing prevalence of discrimination in the field of marine insurance which prevents American marine insurance companies from competing for the marine insurance on imports and exports.

At the outset we wish to emphasize that the American marine insurance market believes firmly in the principle of free competition in marine insurance and seeks only the right to compete for the marine insurance.

The problem of discrimination, which is largely a development of the postwar period, and which threatens the development of international trade itself, has become a subject of international concern, both on the private and political level.

Private insurance interests in the Western Hemisphere have in the course of three hemispheric conferences recognized the importance of eliminating such practices. At the First Hemispheric Conference, held in New York City in 1946, a resolution was presented by the Chilean delegation relative to the "Guarantee of freedom to private enterprise in the insurance field". The resolution was approved and its principle reaffirmed in the Second Hemispheric Conference held in Mexico City in 1948 and in the Third Hemispheric Conference, held in Santiago, Chile, in October 1950.

Similarly, the proposed charter of the International Trade Organization provides:

> "Art. 53. The members recognize that certain services such as transportation, telecommunications, insurance and banking, are substantial elements of international trade, and that any restrictive business practices in relation to them have harmful effects similar to those described in para. 1 of Art. 46."

Last year the International Chamber of Commerce presented the question before the Transport and Communications Commission of the United Nations Social and Economic Council. That Commission passed Resolution 12 by a vote of 10 to 3 (Russia, Poland, and Byelorussia voting against) which recognized that discriminatory measures against marine insurance may interfere with the free flow of international trade and recommended a study of the situation by the Social and Economic Council. This resolution was approved by the Council in July.

The International Union of Marine Underwriters, having among its membership the marine insurance associations of nearly all the free countries of the world, likewise passed a resolution condemning such practices at its annual meeting held in September of last year in Switzerland.

It is submitted therefore that there is abundant evidence of the serious proportions which these practices have reached, and it is felt that the United States should take a realistic approach to the problem in negotiating future treaties of commerce and friendship.

In addition to conforming to current international opinion evidenced by the foregoing, such action would conform to congressional policy that a strong American marine insurance market is essential to the national economy and defense of this country. The House Committee on Merchant Marine and Fisheries recently stated:

> "The Congress has several times in the past forcefully stated its position with regard to fostering the growth of the American marine insurance market" (H. Rept. 220, 81st Cong., 1st sess., on H.R. 1340).

The committee was referring to the principle, first enunciated in the declaration of policy of the Merchant Marine Act of 1920 and more recently in the Merchant Ships Act of 1946 (Public Law 371, 79th Cong., Act of March 8, 1946), that:

> "It is necessary for the national security and development and maintenance of the domestic and the export and import foreign commerce of the United States that the United States have an efficient and adequate American owned merchant marine . . . supplemented by efficient American owned facilities for shipbuilding and ship repair, marine insurance, and other auxiliary services."

The Congress has consistently recognized that a strong American marine insurance industry can only exist in an atmosphere of free international competition. Legislation dealing with marine insurance has never sought to protect American marine insurance industry from foreign competition but to place it in a position to compete on equal terms internationally. The action requested herein is similarly designed to preserve that free international competition which Congress has recognized is essential to a strong marine insurance industry.

Discrimination in marine insurance in its several forms, including laws, regulations, taxes and duties, has either directly or indirectly required marine insurance on imports and exports to and from foreign countries to be placed in the national markets, thus effectively preventing American companies not admitted to do business in the foreign country from competing for the business, as well as preventing the importer and exporter from selecting the most advantageous and economic insurance, and in many cases, causing delay, uncertainty, and confusion.

In protected marine insurance markets higher rates are usually charged because there is no international competition. The added expense is, of course, passed directly to the ultimate consumer of the goods. Similarly, the delay, uncertainty, and confusion directly inhibit the flow of goods in international trade.

The treaties of friendship and commerce with Colombia, Israel and Denmark (Art. XIV, subsec. 3), Ethiopia (Art. XIII, subsec. 2), Greece (Art. XVII, subsec. 1) provide:

> "Nationals and companies of either party shall be accorded national treatment and most-favored-nation treatment with respect to all matters relating to importation and exportation."

There is nothing on this point in the agreement supplementing the treaty with Italy and the original treaty contains narrower language.

The foregoing clause fails to afford any guaranty against the discriminatory practices in question. It does not prevent a party to such a treaty from requiring its own nationals to place their marine insurance in the national market, thus preventing the free selection by the parties to international transactions of the most favorable insurance market. Moreover, if a party to such treaty thus restricts its own nationals in the selection of the insurance market it may similarly restrict the nationals of the United States.

For this reason, and for the reason that the gravity and prevalence of such discriminatory practices require affirmative language in order to assure their elimination, the following or similar words should be inserted following the above quoted words or in some other appropriate place in commercial treaties:

> "Neither Party shall impose any prohibition or restriction or discriminatory tax preventing or hindering the importer or exporter of goods of either

country from obtaining marine insurance on such goods in companies of either Party."

This matter has heretofore been discussed with the Department of State and a memorandum similar to this one has been submitted to the Department. Although the Department has adopted a sympathetic attitude toward the position of American marine insurance underwriters it has not inserted in a commercial treaty any provisions which would enable the American marine insurance underwriters to compete for this insurance in the traditional American manner.

It is, therefore, respectfully requested that if the Senate ratifies these treaties it be on the understanding, condition, or reservation that the clause suggested herein be made an integral part of the treaties.

Discriminatory Practice of Italy and Colombia on Marine Insurance

Senator Sparkman: You state that two countries have discriminatory provisions in their legislation. What two countries are they?

Mr. Leifflen: Colombia and Italy.

Senator Sparkman: Italy and Colombia are involved in these treaties. In what way are those provisions discriminatory?

Mr. Leifflen: Colombia practices its discrimination through its laws and through the office of exchange control, penalizing importers and exporters who place insurance in companies not authorized to do an insurance business in the Republic of Colombia.

Italy, insofar as we know, has no statutory discriminatory provision, but it exercises discrimination by means of its foreign exchange control board.

Senator Sparkman: Do you feel that the provisions in the presently proposed treaties are not sufficiently tight on that?

Mr. Leifflen: I don't think it covers the situation at all, Senator, for this reason: Even the so-called national treatment which Mr. Linder was talking about is not effective. If, say, Colombia imposes a restriction on its own nationals with respect to where they place insurance, we cannot expect them under the national treatment clause to give any better treatment to an American importer or exporter who is dealing with merchants, buyers or sellers in the Republic of Colombia.

Senator Sparkman: Let me ask this question, to see if I understand just what you mean. You mean a shipper from New York shipping goods into Colombia, if he took out insurance on the goods he was shipping with a New York insurance company, how would Colombia interfere with that?

Mr. Leifflen: There are various types of contracts of purchase and sale. Insurance is a term of the contract between the buyer and the seller, and in some types the insurance is taken out by the Colombian purchaser or seller, and if he is required by Colombian law to take it out in a Colombian insurance company, you have one of the terms of the sale dictated by a government which is historically — and that is the way we like to see it continue — is a matter of open negotiation between the buyer and the seller in a competitive market.

Senator Sparkman: There would be nothing to prohibit the shipper in the case I gave, from taking out his insurance in New York, and that certainly could not be interfered with by Colombia.

Mr. Leifflen: That is right.

Senator Sparkman: The question would be if insurance was to be provided by the buyer in Colombia, or in the event of shipping out of Colombia if it was to be provided by the shipper in Colombia. Then it would have to be taken by a Colombian company; is that right?

Mr. Leifflen: Yes, sir, that is right. In some cases it goes further. For instance, in Argentina there is a law that if the goods coming into Argentina or going out of Argentina are at the risk of the Argentine purchaser or seller, as the case may be, the insurance must be taken out with an Argentine insurance company or else there is a large penalty.

That also has an effect on the terms of the contract which takes one term of the contract out of the sphere of free negotiation between the buyer and seller, and that is what the American insurance companies want to provide against, because historically it is a free market.

Senator Sparkman: You believe that in negotiating these agreements that should be one matter that should be included in the negotiations?

Mr. Leifflen: Yes, sir, in negotiating commercial treaties we think our Department of State should endeavor to include a prohibition against governmental interference with the placement of marine insurance so it will be left to the buyer and seller to decide who is to take out the insurance and in what market, exactly like the financing, what the terms will be — 10 days, 30 days, 2 months; the method by which the commodity will be packed. All those matters are, we feel, as advocates of private industry and business, matters which should not be dictated by any government.

Senator Sparkman: Senator Hickenlooper, have you any questions on this point?

Senator Hickenlooper: Mr. Chairman, I think I understand the position.

National Treatment with Respect to the Practice of Professions

I would like to ask Mr. Linder some questions. This note was just sent me by a member of the Senate who asked me to inquire into it, and it is here. This has to do with Article VIII in the treaty with Israel. I have just asked Mr. Marcy to check the other treaties. Perhaps you can tell me whether the same article is in any of the other treaties.

The entire Article VIII apparently is an attempt to give great latitude and privilege to the nationals of either party to use their own technical and professional experts within the territory of the other; and then, in paragraph 2 of Article VIII, it reads as follows:

> Nationals of either party shall not be barred from practising the professions within the territories of the other party merely by reason of their alienage; but they shall be permitted to engage in professional activities therein upon compliance with the requirements regarding qualifications, residence, and competence that are applicable to nationals of such other party.

Now, as I read that, it would mean that nationals of Israel having first been properly admitted here and having met any examinations for professional or technical competence that may apply to American citizens, can go on indefinitely practising their professions here and remain aliens at all times.

Mr. Linden: No. Do you want me to reply, sir?

Senator Hickenlooper: I say, that is the way I would interpret that No. 2, and I would like to comment on that.

First, is a similar provision to Article VIII in the treaty with Israel in any other treaty?

Mr. Walker: It has been in our treaties since 1923.

Mr. Linder: And it does not carry the implication that you read into it. It rather means that a citizen of Israel or any other country with whom we have such an agreement may, upon being properly admitted to the United States, not be barred by reason of being a citizen of Israel from doing what anybody else in this country may do. In the case of certain provisions that is a matter regulated by the State and, as I understand it, a citizen of Israel, if he wants to practice medicine in, say, Florida or New York, he has to do whatever the requirements of those States are.

Senator Hickenlooper: I am not familiar with this subject. I mean, I can't make any positive allegation, but it runs in my mind that there are a number of States that have a flat prohibition against licensing of an alien to practice certain professions or businesses which require a specific professional license. This would abrogate that, I take it.

Mr. Walker: Insofar as the alienage requirement is concerned that is correct. That has been treaty policy since 1923. It has been in most treaties since then. This is a more explicit statement of the rule that has been in effect. It is national treatment on the practice of professions.

(The following information was subsequently supplied by the Department of State:)

> Eight treaties (those with Austria, El Salvador, Germany, Honduras, Hungary, Liberia, Norway, and Uruguay) provide for national treatment generally; and two (Italy and Ireland) so provide except for the practice of law, which in turn is covered by a most-favored-nation clause. Five of the remaining six also contain national-treatment clauses, but subject to qualifications. The treaty with Poland excepted professions reserved to citizens by laws in force on June 15, 1931; and provided further for most-favored-nation treatment on condition of reciprocity. The treaty with Finland contains the reservation "insofar as may be permitted by local law", but supplements this with a most-favored-nation clause. The treaties with China, Estonia, and Latvia contain an exception for professions "reserved exclusively to nationals of the country", without specifying whether a profession can be considered exclusively reserved to citizens if open to other aliens by virtue of a treaty with any third country. The treaty with Siam merely provides for most-favored-nation treatment on condition of reciprocity.

Senator Hickenlooper: Therefore I would interpret it that if an alien, under the provisions in these treaties, who is an engineer or a doctor or a lawyer or of any other profession, once has a proper entry into this country; that is, if he is here under proper entry, then the fact that he is an alien would not bar him — that alone — from the practicing of his profession if he could meet the educational standards or whatever the standards are within the area met by Americans.

Mr. Linder: He would be required to meet all standards except the one of citizenship.

Senator Hickenlooper: And therefore a State law in conflict with that would fall under this treaty.

Mr. Linder: And under other treaties that we have had for many years.

(The following information was subsequently furnished:)

May 16, 1952.

Hon. John J. Sparkman,
United States Senate.

My Dear Senator Sparkman: I have been informed by Acting Assistant Secretary of State Linder that some questions have arisen concerning Article VIII, paragraph 2, of the Treaty of Friendship, Commerce, and Navigation with Israel (Executive R), Eighty-second Congress, first session, which is now being considered by the subcommittee of which you are the chairman. This article reads as follows:

> "2. Nationals of either Party shall not be barred from practicing the professions within the territories of the other Party merely by reason of their alienage; but they shall be permitted to engage in professional activities therein upon compliance with the requirements regarding qualifications, residence, and competence that are applicable to nationals of such other Party."

This article means that a national of Israel shall not be barred from practicing a profession in the United States merely because of his alienage. As the article states, he must comply with State laws regarding qualifications, residence, and competence in his profession which a State applies to any citizen of the United States. If a State, for example, requires a written examination, residence in the State, etc., before it will grant a license to a physician, the particular foreign national must meet all such requirements. The only requirement, if it exists in any State, which may not be imposed, is that the individual concerned be a United States citizen.

Counterparts of this provision granting national treatment with respect to the practice of professions are contained in at least 10 treaties between the United States and other countries to which the advice and consent of the Senate have been given after full consideration. These are the treaties between the United States and Germany of 1923 (Art. I, para. 1); with Austria of 1928 (Art. I, para. 1); with El Salvador of 1926 (Art. I, para. 1); with Honduras of 1927 (Art. I, para. 1); with Hungary of 1925 (Art. I, para. 1); with Liberia of 1938 (Art. I, para. 1); with Uruguay of 1949 (Art. V, para. 1 *(a)*); with Ireland of 1950 (Art. VI, para. 1 *(a)*, excepting only law); and with Italy of 1948 (Art. I, para. 2 *(a)*, excepting only law). It is also contained in the treaty with Colombia (Executive M, 82d Cong., 1st sess., Art. VII, para. 1), which is presently being considered by your committee.

The practice of the United States Government, to include national treatment provisions respecting the practice of professions in bilateral friendship and commerce treaties has thus been followed for nearly 30 years, and has been repeatedly approved by the Senate in its advices and consents to ratifications of these treaties. The practice was established and has been followed because it is in the interest of the Government and people of the United States. Americans are engaged in business and professions all over the world. They have requested, and the United States Government has deemed it appropriate to support, efforts to protect them in their right freely to pursue legitimate business and professional activities without discrimination on account of their American citizenship. Since firm commitments in treaties between foreign countries and the United States respecting this right is the most effective manner by which those rights may be secured, the United States has sought and achieved the execution of treaties with foreign countries which contain such commitments.

Since treaties involve reciprocal obligations, the United States cannot expect to secure the protection of rights of American citizens to practice professions abroad, or to engage in other gainful pursuits, without being prepared to accord reciprocal treatment in the United States to nationals of the particular foreign country. Fortunately, the United States is able to accord reciprocity with minimum interference with local legislation, since our country has always been hospitable to persons who contribute to the building of a healthy and expanding economy. As a consequence of this traditional hospitality, there are on the whole few and relatively minor legal restrictions imposed by local laws on account of alienage, far fewer than are to be found in the laws of almost all other countries. As a result, by these reciprocal treaty commitments, the United States has gained most of the advantages for American citizens. A reversal of this established United States practice would be a retrogressive step inconsistent with and harmful to the interests of the United States and of American citizens.

Sincerely yours,

Jack B. Tate,
Acting Legal Adviser.

National Treatment with Respect to Scientific, Educational, Religious and Philanthropic Activities

Senator Hickenlooper: Article VIII, section 3:

> Nationals and companies of either party shall be accorded national treatment and most-favored-nation treatment with respect to engaging in scientific, educational, religious and philanthropic activities within the territories of the other Party, and shall be accorded the right to form associations for that purpose under the laws of such other Party. Nothing in the present treaty shall be deemed to grant or imply any right to engage in political activities.

Is that an innovation in treaties?

Mr. Linder: No, sir; it is not. It was in the Uruguayan Treaty and the Italian and Irish treaties.

Senator Hickenlooper: It is not in the other treaties heretofore, historically?

Mr. Linder: I don't know how far back, but I know it was in those three treaties.

Senator Hickenlooper: Well then, as I understand it, in these treaties that we have formerly adopted, and in these treaties that are now proposed, any organization or group of people from any of the treaty countries can come here and they have a guaranteed right under this treaty to form such organizations engaged in scientific, educational, religious, or philanthropic activities as they please so long, I assume, as they do not violate criminal laws of some kind. But there is very little limit to this thing.

Mr. Linder: As I understand it, Senator, it says that they may do the same things that a national of this country may do in that respect, and that we may do the same things as a national of their country may do, and that in any event, if any other foreign country is given more advantageous treatment, we shall share in that treatment and, by the same token, if we give more advantageous treatment to a third country they will have the benefit of that more advantageous treatment.

Senator Hickenlooper: I was not aware that that provision had been in existence with other countries. It has fascinating possibilities.

Mr. Linder: It has on the whole been one that we have sought. We have sought it for our missionary activities, and I think is has been harder for us to obtain rather than the reverse.

Senator Hickenlooper: That is all, thank you.
As I say, this inquiry was made on the request of another Senator, asking that I inquire into this matter.

Senator Sparkman: May I ask a simple question for the record? An alien is a person who was born abroad and has not been naturalized?

Mr. Linder: That is right.

Senator Sparkman: After he is naturalized he is no longer an alien?

Mr. Linder: That is correct.

(The following communications were received for insertion subsequent to the hearing:)

The Secretary of Commerce,
Washington 25, D.C., May 12, 1952.

Hon. Tom Connally,
Chairman, Committee on Foreign Relations,
United States Senate, Washington 25, D.C.

Dear Mr. Chairman: I am glad to have this opportunity again to endorse the program for the negotiation of modernised general commercial treaties with interested foreign countries.

Aside from certain refinements and variations in detail, I understand that four of the five commercial treaties that have been concluded during the past year — those with Colombia, Greece, Israel, and Denmark — contain substantially the same provisions as the general commercial treaties with Ireland and Uruguay, to which the Senate gave its consent in 1950. The fifth, that with Ethiopia, is an abridged form designed to achieve the same general objective. In addition, there is the Italian supplementary agreement which is intended to bring the 1948 treaty with that country abreast of later developments.

American businessmen who have investment or trade relations with these countries, or who are contemplating such relationships, have a genuine stake in numerous provisions of these treaties. These provisions include the ones which concern the protection of their persons and property in the other countries involved, the permitted range of their activities in those areas, the conditions of their investment and withdrawal of funds, and the treatment of imports and exports.

As you may know, the Department of Commerce has recently been giving special attention to the problems of facilitating mutually profitable private United States investments in foreign countries. The conditions under which foreign enterprises may be established and operated in the various countries, the obligations which they must assume, and the rights of which they can feel assured, are outstanding among these problems. It is therefore particularly gratifying that the modernized commercial treaties contain explicit provisions on these questions. In our opinion, they should go far toward creating — so far as governmental agreements can — that much desired favorable climate necessary to attract American capital and technology.

These commercial treaties can do no more, of course, than establish the standards to be applied reciprocally by the contracting governments in these matters. Various other favorable conditions must be present before individual firms will launch ventures where these assurances can come into play. However, our discussions with American businessmen have revealed their belief that the conclusion of commercial treaties of the type now before your committee is one of the most useful steps the Government can take to aid private United States foreign investors. I am sure they will welcome your approval of these treaties.

Sincerely yours,

Charles SAWYER,
Secretary of Commerce.

American Arbitration Association
New York 20, N.Y., May 14, 1952.

Hon. Tom Connally,
Chairman, Committee on Foreign Relations,
United States Senate, Washington, D.C.

My Dear Senator: Your committee is considering the treaties of commerce, friendship and navigation which the United States recently concluded with Denmark, Israel, Colombia and Greece, and the agreement supplementing the commercial treaty with Italy.

All these treaties contain a provision facilitating the mutual enforcement of arbitration agreements and awards in commercial disputes between citizens of the respective countries. The State Department is to be highly commended for introducing this modern feature in bilateral treaties, thus making a real contribution to the advancement and use of arbitration.

This association, which has been dealing with international commercial arbitration in the interests of American trade and commerce for more than 25 years, considers this provision of the treaties a valuable feature and a successful effort in the protection of American trade interests.

The standard arbitration provisions in these treaties will guarantee the American trader the effective use of arbitration abroad. When, on the other hand, execution of awards rendered in a foreign country is sought in any State of the Union, they are subject to the law prevailing in the respective State and have to comply with its requirements. Thus, the rights of the States of the Union are preserved, in regard to the application of their arbitration laws.

The association welcomes the efforts, as embodied in the treaties, to secure the enforcement of arbitration agreements and awards in the interests of American trade. It recommends in this respect favorable consideration of the treaties.

Very sincerely yours,

A. C. CROFT,
President.

(Note. — The subcommittee then considered the consular conventions. This portion of the hearing was printed as appendix to Ex. Rept. 8, 82d Cong., 2d sess., Consular Conventions with Iceland and with Great Britain.)

Senator Sparkman: Thank you very much.

(The hearing was adjourned at 12.10 p.m.)

Annex 87

"COMMERCIAL TREATY PROGRAM OF THE UNITED STATES", DEPARTMENT OF STATE PUBLICATION 6565, COMMERCIAL POLICY SERIES 163, JANUARY 1958

In furtherance of a policy that goes back to the birth of our Republic, the United States since the end of the Second World War has negotiated treaties of friendship, commerce and navigation with 16 countries. Most of these treaties have gone through the process of ratification and are now in force. The new treaty partners are in every major area of the globe and in almost every stage of political and economic development. They make up a cross section of the world outside the Iron Curtain.

This postwar series marks significant progress in the commercial treaty program which the Department of State has been carrying on for many years. The aim of the program is to use the treaty process to assure a greater measure of security for US citizens and US interests in foreign countries and to advance the general objectives of the Nation's foreign policy. Though commercial treaties are negotiated and signed without fanfare, they are important to the welfare of the country as a whole. They also have an immediate personal interest for an ever-growing number of our citizens. This is especially true for the American who goes abroad, whether he goes only briefly as a tourist or student or whether he goes to live there and trade or run a business.

Treaty Protection for American Citizens

When an American is in a foreign country, these treaties serve as a charter of his rights. Their aim is to assure him much the same fundamental personal liberties that he enjoys in this country. They pledge constant protection and security for his person and property. They confer on him the right to engage in the normal run of economic pursuits, whether by himself or in association with others, and in general assure to him the privileges necessary to carry on his business effectively. When he goes to a treaty country he receives these things as a matter of right, duly agreed to by his Government and that of the other treaty country and given the status of a solemn international obligation.

The number and extent of these personal rights are by no means negligible. They include freedom of travel and residence; liberty of conscience; the right to hold religious services; the right to communicate freely with others both inside and outside the country; and the right to gather and report news. Furthermore, these treaties seek to protect the individual in encounters with the law. They provide guaranties of decent and humane treatment when in police custody, a prompt trial, and the services of competent counsel. They also assure him access to the courts of justice for all legitimate ends.

Following these fundamental guaranties come assurances of protection and security for the individual in his capacity as property holder. These include freedom from unlawful visit and search of his home or place of business, the right to just compensation if his property is taken by the State, and certain rights in connection with acquiring, holding, disposing of both real and personal property.

It is no accident that these treaties begin with such guaranties, for implicit in them is the belief that good international relations, like good government at home, can have no stronger foundation than respect for the person and property of the individual.

Code of Fair Treatment for the Businessman

Guaranties of security of rights in property, of course, are of special importance to the American who goes abroad as a businessman. Without such guaranties the economic privileges given to him by a treaty would lose much of their meaning. With them, however, the treaty comes to be a code of fair treatment for the American businessman who seeks to trade, to invest, or to run a business in a foreign country.

The treaty commitments which make up the bulk of this code confer upon the American businessman a very substantial body of economic privileges in foreign countries. They are probably the strongest treaty provisions ever proposed in this field for negotiation on a worldwide basis. They are designed to assure to economic enterprises the ability to operate in a foreign country on a basis of true competitive equality with local concerns.

By these provisions the American businessman obtains the right, in a foreign country, to engage in a wide range of commercial and industrial activities on terms as favorable as those enjoyed by citizens of that country. This is the basic economic commitment.

Other economic rights accorded by the treaties, though important in themselves, are mainly designed to render the basic commitment truly effective. Thus an American businessman engaging in an enterprise permitted under the treaty is assured freedom to manage the affairs of his enterprise. He is allowed to enter the local labor market and engage personnel of his choice. He is protected against discriminatory taxation. He is permitted to withdraw his capital and earnings to the fullest extent feasible in light of the foreign exchange position of the country.

These provisions are intended to gain for the American businessman what might be decribed as equality of competitive opportunity with his local counterpart. In the modern world, however, the local competitor often is the State itself. Treaties of friendship, commerce and navigation recognize this special situation and seek to reduce the hazards of unfair competition from state-controlled enterprises. They provide guaranties of non-discriminatory treatment in the awarding of government contracts and concessions and in the carrying out of nationalization programs. Of even greater significance in this connection is a provision, an innovation in treaty-making, which assures to American commercial enterprises which must compete with state-controlled foreign concerns the same economic favors that the latter receive from their government.

Furthermore, the provisions constituting a code of fair treatment for the American businessman operating abroad apply to the corporation equally with the individual. In a sense, this is little more than simple recognition of the predominant role of the corporation in modern business affairs. Such recognition requires that the American businessman be assured wide latitude in utilizing the corporate device in his foreign operations. In fact, the greatly expanded scope of the provisions of our postwar treaties as they affect corporations may perhaps be regarded as the most significant advance made by this new series over earlier treaties of this type.

Treaties as Guardians of Foreigners in the United States

So far treaties have been spoken of exclusively in terms of the rights they give and the protection they assure to American citizens and businesses in foreign countries. But these treaties work both ways. They are drawn up in mutual terms, and rights assured to Americans in foreign countries are assured in like manner to foreigners in this country. The treaty serves the foreigner as a guide to the treatment to which he is entitled in the United States. The value of such a guide is apparent when it is recalled that the newcomer to this country is confronted not only with the complexities of Federal law and administration but also with the systems of 48 states.

Actually, these treaties reinforce in terms of international obligation the position of the Federal Government as guardian of the rights of foreigners in this country. They thus reflect a domestic policy that has developed through the years in conformity with the Constitution and Federal law. They confer upon qualified aliens the privilege of indefinite sojourn for purposes of foreign trade. They safeguard aliens from a treaty country, on a basis of reciprocity, against a number of legal restrictions to which aliens from non-treaty countries are or may become subject. Moreover, the states themselves on occasion voluntarily extend by law more favorable treatment to treaty aliens than is granted other foreigners, particularly in the matter of land ownership. In general, therefore, the treaty alien tends to be better off in the United States than the foreigner who comes from a non-treaty country. Thus commercial treaties provide for the conduct of day-to-day relations between the United States and foreign countries on the sound basis of mutual advantage.

Traditional Role of Commercial Treaties

The negotiation of treaties of this kind has long been traditional among nations. Dealing as they do with the protection of persons and property and the general principles of economic conduct, they are the sort of thing that countries normally turn to in the interest of assuring good order in their everyday relations with one another.

In fact, commercial treaties go back in origin several centuries to a time when it was customary to look upon the stranger with great hostility and suspicion and to enact harsh laws against him. Under such conditions ordinary commercial intercourse was almost impossible unless the merchant could be confident that while abroad he would be protected —

- from molestation of his person or his property;
- from official persecution or mob violence caused by the fact that his religious beliefs or practices differed from those of the place where he traded;
- from arbitrary interference with, or seizure of, his goods and ships;
- from confiscation of his estate in case of death.

Governments, seeking trade advantage, recognized the need and sought the remedy by treaty.

The United States, in company with other responsible members of the community of nations, has long followed a policy of concluding treaties of friendship, commerce and navigation on as wide a basis as possible. This policy, in fact, had its beginnings in the early days of our independence. The first treaty of this kind to be entered into by the United States was signed with France on the same day in 1778 that the two countries concluded their historic alliance. It has been followed by more than 130 other treaties. Many times the very first treaty to be concluded between the United States and a foreign country has been a treaty of friendship, commerce and navigation, and the signature of such a treaty has often been the prelude to a long period of friendly political and economic relations.

Our earliest treaties with European powers were usually commercial treaties, and treaties of this kind were entered into with most of the Latin American countries while they were still engaged in their struggle for independence. As early as 1832 President Andrew Jackson sent a special agent to the Orient to negotiate treaties with Siam and Muscat. A leading objective of Caleb Cushing's mission to China in 1844 was to obtain a commercial treaty.

Some of these early treaties are still in effect, including some with important commercial and industrial countries. The treaty with Great Britain, which goes back to 1815, is among these. No fewer than nine treaties now in force are over a century old.

Treaties and Aids to Foreign Economic Policy

In the foregoing we have emphasized the great function of protecting American citizens and interests in foreign countries. Everywhere such treaties can strengthen the hand of the Department of State in giving effective diplomatic protection to Americans when they need it abroad. In fact, this protective function becomes increasingly important year by year, as more Americans travel or live abroad, as American business interests operate more extensively in foreign countries, and as some foreign countries seek to exercise closer control over the activities of aliens.

But it should not be overlooked that in performing this function, these treaties also further other important objectives of our foreign policy. Consistently, from the early days of our national independence, the provisions of American commercial treaties have reflected the primary aims of American policy and have contributed materially to attaining them.

Immediately after the signing of the Declaration of Independence, the emphasis was upon obtaining foreign recognition of our independence and upon developing new markets to replace those lost when ties with Great Britain were severed.

During the first half of the 19th century, the emphasis shifted to the safeguarding of American vessels against discriminatory treatment in foreign ports. This was the era of the clipper ship, when the American flag was familiar to every port in the world.

At the same time, still other objectives were pursued. The elaborate provisions in treaties of this period dealing with neutral rights on the high seas clearly reflect the difficulties experienced by American commerce during the Napoleonic Wars and represent an effort to promote more enlightened concepts of international law. The extensive treaty-making with Latin American countries during the 1820s, which was a part of our prompt recognition of those States, was in substance a quiet but effective bolstering of the Monroe Doctrine.

After the Civil War, interest in treaty-making decreased with the dwindling of our merchant marine and with the growing national absorption in industrialization and the development of our natural resources.

After World War I, however, the United States, now a creditor nation, found itself interested once more in promoting foreign trade. Ever-increasing industrial production required new outlets in the form of foreign markets. Other countries, burdened with heavy obligations to this country, needed access to the United States domestic market if they were to meet those obligations. Accordingly, treaties concluded between the two world wars tended to emphasize the encouragement of trade. In particular, they provided, for the first time in our history, that the clause granting most-favored-nation treatment in tariff matters should be unconditional in its application.

This meant that each party agreed to grant to the other, simultaneously and unconditionally, without request and without compensation, any trade concession that it might grant at any time to a third country. (When a most-favored-nation clause was conditional, as in United States commercial treaties before the 1920s, each country said to the other, in effect: "If we grant a trade concession to any third country we will give the same concession to you, on condition that you give us an equivalent concession in return.")

Promotion of Private Capital Investment

After World War II increasing emphasis came to be placed on the encouragement and protection of investment. The promotion of trade remained an important feature of our policy, and strong provisions in furtherance of liberal trade principles have been included in all the postwar treaties. Moreover, the protection of the American merchant marine has assumed greater importance since the war because of the spread of discriminatory shipping practices throughout the world; and the treaty provisions on navigation have been strengthened.

The United States, however, had become the principal capital-exporting country of the world. To encourage the investment of American private funds in the actual producing of raw materials, goods, and services in foreign countries was a matter of importance from the standpoint of our domestic economy as well as of the economic development of the foreign countries concerned. Investments leading to increased productivity and higher living standards abroad promised wider markets for American goods and further opportunities for fruitful investment. Moreover, the United States was the major source of venture capital not depleted by the war. The employment of that capital in advancing the economic development of our friends would promote the common defense as well as further our own prosperity in the course of furthering theirs.

In seeking to promote the economic development of other countries through private capital the United States is applying the lessons of its own national experience. Since the early days of the Republic, this country has followed a policy of welcoming foreign capital. Events have proved the soundness of this policy, for foreign capital has played a vital role in our economic development. Railroading, mining, ranching, textile manufacturing, and other important American industries owe much of their initial progress to the willingness of the foreign investor to risk his funds inside this country. An important element in the willingness of foreign venture capital to invest in the United States, of course, was the existence of conditions of security for the investor and his enterprise.

In the present treaty program, therefore, emphasis has been placed upon expanding and improving the provisions dealing with the rights of American citizens and their enterprises abroad. The principal objective has been to develop, to the extent that this can be done by treaty, an environment in foreign countries that will be more conducive to the flow of American private capital.

Special attention has been given to affording American investors a proper measure of security against undue risks likely to plague their foreign operations. It has not been intended to shield the investor against the economic risks to which venture capital is subject but to reduce the special hazards to which overseas investment may be exposed by reason of unfavorable laws or juridical conditions. Rigid exchange controls, inequitable tax statutes, or drastic expropriation laws are not conducive to the free flow of capital, and it is against obstacles of this kind that these treaties are directed.

In the field of investment, as in trade and shipping, the aim of these treaties is to strengthen the hand of the Government in carrying out its obligation to safeguard American citizens and their interests in foreign countries. Hence the first thought is effective protection for investment enterprises when they have become established abroad, without immediate regard to ways and means of encouraging those merely planning a foreign venture.

In view of this practical need, it is of basic importance to have firm assurances of equal treatment for American business enterprises after they have entered a foreign country. With unfavorable legal and juridical conditions for the foreign investor so commonplace a matter, such assurances become the key to effective protection through the treaty process.

To establish such protection for the enterprise in being often necessitates a pragmatic approach. In the give and take of negotiating under present conditions it is not always possible to obtain the sum total of the provisions that are regarded as ideal in promoting new investments abroad. Often, for example, it is not possible to work out entirely satisfactory commitments on the employment of American engineers and technicians. On occasion it is not possible to assure a wholly unrestricted right of entry for new investment enterprises. In view of the traditional role of these treaties and of the nature of the Government's responsibility towards its citizens, however, the protective function must take precedence over matters of promotion, even though the value of the latter function is fully recognized.

In any event there can be little in the way of effective promotion unless there is effective protection, for new capital is unlikely to venture where existing capital is ill-treated. Hence the emphasis on the protective feature of the treaty provisions on investments is essentially a matter of placing first things first.

The contribution these treaties can make to the economic development of foreign countries is a matter of very real importance both to ourselves and to the rest of the free world. These treaties offer a means whereby the resources and abilities of American private enterprise may work more effectively abroad. Private enterprise can place on an enduring basis the work undertaken under emergency circumstances by the economic-assistance programs.

It has been recognized from the start that private enterprise is equipped to play a major role in programs devoted to the economic development of underdeveloped countries. Government projects are necessarily limited in character and duration. Direct private investment, however, can command large and varied resources and by its very nature is normally a long-term undertaking carrying with it its own technical know-how and skills. The greater the extent to which the private investor enters into the work of economic development abroad the less the burden on the public treasury and the greater the benefits to the country as a whole.

That treaties of this kind have an important role in economic development abroad has received explicit recognition by both Congress and the President. In fact Congress in the Mutual Security Act of 1954 specifically directed the executive branch to accelerate the program for negotiating such treaties in order to encourage and facilitate the flow of private investment to countries participating in the mutual security program. The President himself has specifically endorsed the treaty approach as a means of establishing common rules for the fair treatment of foreign investments. In addition, in private business circles a number of the leading trade and investment groups in this country are advocates and supporters of the treaty program.

Friendship Among the Nations

The Department of State intends to continue pressing ahead with the treaty program. The United States stands willing to negotiate treaties of this kind with all friendly, like-minded countries.

Though commercial treaties deal with practical matters such as the status of foreigners and the conduct of general economic relations, these treaties are, above all, treaties of friendship. Their fundamental objectives — mutual protection of the foreigner, maintenance of good order in everyday business affairs, encouragement of economic development, strengthening of the rule of law in the dealings of one nation with another — all are manifestations of friendship between peoples. Thus commercial treaties are examples of how nations can act together, under law, for their own and the common good.

Annex

TREATIES OF FRIENDSHIP, COMMERCE AND NAVIGATION

The treaties of friendship, commerce and navigation or comparable treaties dealing with general economic relations which are currently in effect between the United States and various foreign countries are listed below[1]. In addition, those treaties which have been signed since 1945 but are not in force have been included. In using this list it should be borne in mind that these treaties, while dealing with the same general range of subject-matter, were concluded over a span of more than 140 years and under widely differing circumstances, and that there is naturally considerable variance among them from the standpoint of responsiveness to present-day conditions.

Treaties since 1945

Republic of China, Treaty of friendship, commerce and navigation signed at Nanking, November 4, 1946 (in force November 30, 1948).

Colombia, Treaty of friendship, commerce and navigation signed at Washington, April 26, 1951 (not in force).

Denmark, Treaty of friendship, commerce and navigation signed at Copenhagen, October 1, 1951 (not in force).

Ethiopia, Treaty of amity and economic relations signed at Addis Ababa, September 7, 1951 (in force October 8, 1953).

Federal Republic of Germany, Treaty of friendship, commerce and navigation signed at Washington, October 29, 1954 (in force July 14, 1956).

Greece, Treaty of friendship, commerce and navigation signed at Athens, August 3, 1951 (in force October 13, 1954).

Haiti, Treaty of friendship, commerce and navigation signed at Port-au-Prince, March 3, 1955 (not in force).

Iran, Treaty of amity, economic relations and consular rights signed at Tehran, August 15, 1955 (in force June 16, 1957).

Ireland, Treaty of friendship, commerce and navigation signed at Dublin, January 21, 1950 (in force September 14, 1950).

Israel, Treaty of friendship, commerce and navigation signed at Washington, August 23, 1951 (in force April 3, 1954).

Italy, Treaty of friendship, commerce and navigation signed at Rome, February 2, 1948 (in force July 26, 1949).

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[1] This list is current as of December 1957. Since the treaty program is being actively pursued, the list will, of course, require revision from time to time as new signatures and ratifications occur.

Italy, Agreement supplementing the treaty of friendship, commerce and navigation of 1948, signed at Washington, September 26, 1951 (not in force).

Japan, Treaty of friendship, commerce and navigation signed at Tokyo, April 2, 1953 (in force October 30, 1953).

Korea, Treaty of friendship, commerce and navigation signed at Seoul, November 28, 1956 (in force November 7, 1957).

Netherlands, Treaty of friendship, commerce and navigation signed at The Hague, March 27, 1956 (in force December 5, 1957).

Nicaragua, Treaty of friendship, commerce and navigation signed at Managua, January 21, 1956 (not in force).

Uruguay, Treaty of friendship, commerce and economic development signed at Montevideo, November 23, 1949 (not in force).

Treaties Concluded 1920-1945

Austria, Treaty of friendship, commerce and consular rights signed at Vienna, June 19, 1928.

El Salvador, Treaty of friendship, commerce and consular rights signed at San Salvador, February 22, 1926.

Estonia, Treaty of friendship, commerce and consular rights signed at Washington, December 23, 1925.

Finland, Treaty of friendship, commerce and consular rights signed at Washington, February 13, 1934.

Honduras, Treaty of friendship, commerce and consular rights signed at Tegucigalpa, December 7, 1927.

Latvia, Treaty of friendship, commerce and consular rights signed at Riga, April 20, 1928.

Liberia, Treaty of friendship, commerce and navigation signed at Monrovia, August 8, 1938.

Norway, Treaty of friendship, commerce and consular rights signed at Washington, June 5, 1928.

Thailand, Treaty of friendship, commerce and navigation signed at Bangkok, November 13, 1937.

Treaties Concluded Before 1920

Argentina, Treaty of friendship, commerce and navigation signed at San José, July 27, 1853.

Belgium, Treaty of commerce and navigation signed at Washington, March 8, 1875.

Bolivia, Treaty of peace, friendship, commerce and navigation signed at La Paz, May 13, 1858.

Brunei, Convention of amity, commerce and navigation signed at Brunei, June 23, 1850.

Colombia, Treaty of peace, amity, navigation and commerce signed at Bogotá, December 12, 1846.

Costa Rica, Treaty of friendship, commerce and navigation signed at Washington, July 10, 1851.

Denmark, Convention of friendship, commerce and navigation signed at Washington, April 26, 1826.

Morocco, Treaty of peace and friendship signed at Meknes, September 16, 1836.

Muscat-Zanzibar, Treaty of amity and commerce signed at Muscat, September 21, 1833.

Paraguay. Treaty of friendship, commerce and navigation signed at Asunción, Febuary 4, 1859.

Spain. Treaty of friendship and general relations signed at Madrid, July 3, 1902.

Switzerland. Convention of friendship, commerce and extradition signed at Bern, November 25, 1850.

United Kingdom. Convention to regulate commerce and navigation signed at London, July 3, 1815.

Yugoslavia. Treaty of commerce and navigation signed at Belgrade, October 14, 1881.

In addition, there are currently in force treaties dealing in less comprehensive fashion with commerce and general economic relations with France (1822), Iraq (1938), and Turkey (1929, 1931).

Annex 88

LETTER OF THE SECRETARY OF STATE, DATED 25 JANUARY 1952, CONTAINED IN THE MESSAGE FROM THE PRESIDENT OF THE UNITED STATES TRANSMITTING THE SUPPLEMENTARY AGREEMENT, SENATE PRINT EXECUTIVE H, 82D CONGRESS, 2D SESSION, PAGE 2

AGREEMENT SUPPLEMENTING THE TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION WITH ITALIAN REPUBLIC

Message from the President of the United States Transmitting an Agreement Supplementing the Treaty of Friendship, Commerce, and Navigation between the United States of America and the Italian Republic, Signed at Washington, September 26, 1951

January 29, 1952. The Agreement was read the first time and the injunction of secrecy was removed therefrom, and together with all accompanying papers was referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate.

The White House, January 29, 1952.

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith an agreement supplementing the treaty of friendship, commerce, and navigation between the United States of America and the Italian Republic, signed at Washington on September 26, 1951.

I transmit also, for the information of the Senate, the report by the Secretary of State with respect to the agreement.

Harry S. TRUMAN.

(Enclosures: (1) Report of the Secretary of State; (2) agreement supplementing the treaty of friendship, commerce, and navigation between the United States and Italy, signed at Washington, September 26, 1951.)

Department of State,
Washington, January 25, 1952.

The President,

The White House:

The undersigned, the Secretary of State, has the honor to submit to the President, with a view to its transmission to the Senate to receive the advice and consent of that body to ratification, if the President approve thereof, an agreement supplementing the treaty of friendship, commerce, and navigation between the

United States of America and the Italian Republic, signed at Washington, September 26, 1951.

For the most part, the provisions of the agreement represent amplifications of the treaty of friendship, commerce, and navigation with Italy, which was signed at Rome on February 2, 1948, and entered into force on July 26, 1949 (S. Ex. E, 80th Cong., 2d sess.). Such provisions are in keeping with improvements incorporated in treaties of this type formulated since signature of the 1948 treaty, including *(a)* the treaty of friendship, commerce, and economic development with Uruguay, signed at Montevideo on November 23, 1949 (S. Ex. D, 81st Cong., 2d sess.), and the treaty of friendship, commerce, and navigation with Ireland, signed at Dublin on January 21, 1950 (S. Ex. H, 81st Cong., 2d sess.), both of which treaties have received Senate advice and consent to ratification; and *(b)* the treaty of friendship, commerce, and navigation with Colombia, signed at Washington on April 26, 1951 (S. Ex. M, 82d Cong., 1st sess.), and the treaty of friendship, commerce, and navigation with Israel, signed at Washington on August 23, 1951 (S. Ex. R, 82d Cong., 1st sess.), which treaties were submitted to the Senate on June 13, 1951, and October 18, 1951, respectively, for advice and consent to ratification. The supplementary agreement with Italy will bring the 1948 treaty abreast of the more recent treaties of this type and, by rounding out the comprehensive rules governing general economic relations established by that treaty, further encourage private capital investments.

The following articles of the agreement contain provisions similar to those first introduced in the 1949 treaty with Uruguay: Article I, which safeguards nationals and companies of each party from arbitrary infringements of their established interests in the territories of the other; Article II, which gives certain assurances regarding the employment of technical personnel; and Articles III and IV, which provide for the remittance of earnings and the transferability of capital. The provisions of Article VI, regarding the enforceability of commercial arbitration contracts and awards, were first introduced in the 1950 treaty with Ireland. Provisions similar to the foregoing are to be found in all subsequent comprehensive treaties of this type signed on behalf of the United States with other countries, as are also the provisions of Article VIII, which provide for consultation regarding problems that may arise in the application or interpretation of the treaty.

Article V of the agreement, in which confirmation is given that United States investments in Italy will receive advantages conferred by special Italian legislation for the development of southern Italy and particular industrial areas, is unique. Another provision incorporated for the first time in an agreement to which the United States is a party is that contained in Article VII. By this article the two Governments, in conformity with standards prescribed therein, are empowered to enter into reciprocal arrangements whereby in certain situations social insurance protection accumulated by nationals of either country under systems of both countries may be combined, thus avoiding loss of social security benefits on the part of individuals who have worked at different times in both countries.

It is provided in the agreement that the agreement shall enter into force on the day of exchange of ratifications and shall thereupon constitute an integral part of the 1948 treaty.

Respectfully submitted.

Dean ACHESON.

(Enclosure: Agreement supplementing the treaty of friendship, commerce, and navigation between the United States and Italy, signed at Washington, September 26, 1951.)

AGREEMENT SUPPLEMENTING THE TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND THE ITALIAN REPUBLIC

The United States of America and the Italian Republic, desirous of giving added encouragement to investments of the one country in useful undertakings in the other country, and being cognizant of the contribution which may be made toward this end by amplification of the principles of equitable treatment set forth in the Treaty of Friendship, Commerce and Navigation signed at Rome on February 2, 1948, have resolved to conclude a supplementary Agreement, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

Dean Acheson, Secretary of State of the United States of America, and

The President of the Italian Republic:

Giuseppe Pella, Minister of the Budget of the Italian Republic,

Who, having communicated to each other their full powers found to be in due form, have agreed as follows:

ARTICLE I

The nationals, corporations and associations of either High Contracting Party shall not be subjected to arbitrary or discriminatory measures within the territories of the other High Contracting Party resulting particularly in: *(a)* preventing their effective control and management of enterprises which they have been permitted to establish or acquire therein; or, *(b)* impairing their other legally acquired rights and interests in such enterprises or in the investments which they have made, whether in the form of funds (loans, shares or otherwise), materials, equipment, services, processes, patents, techniques or otherwise. Each High Contracting Party undertakes not to discriminate against nationals, corporations and associations of the other High Contracting Party as to their obtaining under normal terms the capital, manufacturing processes, skills and technology which may be needed for economic development.

ARTICLE II

With reference to Article I, paragraph 2 *(c)*, of the said Treaty of Friendship, Commerce and Navigation, laws regarding qualifications for the practice of a profession shall not prevent the nationals, corporations and associations of either High Contracting Party from engaging, or contracting for the services of, technical and administrative experts for the particular purpose of making, exclusively within the enterprise, examinations, audits and technical investigations for, and rendering reports to, such nationals, corporations and associations in connection with the planning and operation of their enterprise, and enterprises in which they have a financial interest, within the territories of the other High Contracting Party.

ARTICLE III

1. Regarding the transferability of capital invested by nationals, corporations and associations of either High Contracting Party in the territories of the other, and the returns thereon, the High Contracting Parties undertake to grant each other the most liberal treatment practicable.

2. Each High Contracting Party will permit the nationals, corporations and associations of the other High Contracting Party to transfer freely, by obtaining exchange in the currency of their own country:

(a) Earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and funds for amortization of loans and depreciation of direct investments, and
(b) Funds for capital transfers.

If more than one rate of exchange is in force, the rate applicable to transfers referred to in the present paragraph shall be a rate which is specifically approved by the International Monetary Fund for such transactions or, in the absence of such specifically approved rate, an effective rate which, inclusive of any tax or surcharges on exchange transfers, is just and reasonable.

ARTICLE IV

1. Notwithstanding the provisions of Article III of the present Agreement, each High Contracting Party shall retain the right, in periods of foreign exchange stringency, to apply: *(a)* exchange restrictions to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people; *(b)* exchange restrictions to the extent necessary to prevent its monetary reserves from falling to a very low level or to effect a moderate increase in very low monetary reserves; and *(c)* particular exchange restrictions specifically authorized or requested by the International Monetary Fund. In the event that either High Contracting Party applies exchange restrictions, it shall within a period of three months make reasonable and specific provisions for the transfers referred to in Article III, paragraph 2 *(a)*, together with such provisions for the transfers referred to in Article III, paragraph 2 *(b)*, as may be feasible, giving consideration to special needs for other transactions, and shall afford the other High Contracting Party adequate opportunity for consultation at any time regarding such provisions and other matters affecting such transfers. Such provisions shall be reviewed in consultation with such other High Contracting Party at intervals of not more than twelve months.

2. The provisions of the present Article, rather than those of Article XXIV, paragraph 1 *(f)*, of the said Treaty, shall govern as to the matters treated in the present Agreement.

ARTICLE V

In addition, and without prejudice to the other provisions of the present Agreement or of the said Treaty, there shall be applied to the investments made in Italy the regulations covering the special advantages set forth in the fields of taxation, customs and transportation rates, for the industrialization of Southern Italy under Law No. 1598 of December 14, 1948, and for the development of the Apuanian industrial area and the industrial areas of Verona, Gorizia, Trieste, Leghorn, Marghera, Bolzano and other area covered by the Italian legislation now existing or which may in the future be adopted.

ARTICLE VI

The clauses of contracts entered into between nationals, corporations and associations of either High Contracting Party, and nationals, corporations and associations of the other High Contracting Party, that provide for the settlement by arbitration of controversies, shall not be deemed unenforceable within the territories of the other High Contracting Party merely on the grounds that the place designated for the arbitration proceedings is outside such territories, or that the nationality of one or more of the arbitrators is not that of such other High Contracting Party. No award duly rendered pursuant to any such contractual clause, which is final and enforceable under the laws of the place where rendered, shall be deemed invalid or denied effective means of enforcement within the territories of either High Contracting Party merely on the grounds that the place where such award was rendered is outside such territories or that the nationality of one or more of the arbitrators is not that of such High Contracting Party. It is understood that nothing herein shall be construed to entitle an award to be executed within the territories of either High Contracting Party until after it has been duly declared enforceable therein.

ARTICLE VII

1. The two High Contracting Parties, in order to prevent gaps in the social insurance protection of their respective nationals who at different times accumulate substantial periods of coverage under the principal old-age and survivors insurance system of one High Contracting Party and also under the corresponding system of the other High Contracting Party, declare their adherence to a policy of permitting all such periods to be taken into account under either such system in determining the rights of such nationals and of their families. The High Contracting Parties will make the necessary arrangements to carry out this policy in accordance with the following principles:

> *(a)* Such periods of coverage shall be combined only to the extent that they do not overlap or duplicate each other, and only in so far as both systems provide comparable types of benefits.
>
> *(b)* In cases where an individual's periods of coverage are combined, the amount of benefits, if any, payable to him by either High Contracting Party shall be determined in such a manner as to represent, so far as practicable and equitable, that proportion of the individual's combined coverage which was accumulated under the system of that High Contracting Party.
>
> *(c)* An individual may elect to have his right to benefits, and the amount thereof, determined without regard to the provisions of the present paragraph.

Such arrangements may provide for the extension of the present paragraph to one or more special old-age and survivors insurance systems of either High Contracting Party, or to permanent or extended disability insurance systems of either High Contracting Party.

2. At such time as the Maintenance of Migrants' Pension Rights Convention of 1935 enters into force with respect to both High Contracting Parties, the provisions of that Convention shall supersede, to the extent that they are inconsistent therewith, paragraph 1 of the present Article and arrangements made thereunder.

ARTICLE VIII

Each High Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such questions as the other High Contracting Party may raise with respect to any matter affecting the operation of the present Agreement or of the said Treaty.

ARTICLE IX

The present Agreement shall be ratified, and the ratifications thereof shall be exchanged at Washington as soon as possible. It shall enter into force on the day of exchange of ratifications, and shall thereupon constitute an integral part of the said Treaty of Friendship, Commerce and Navigation.

In witness whereof the respective Plenipotentiaries have signed the present Agreement and have affixed hereunto their seals.

Done in duplicate, in the English and Italian languages, both equally authentic, at Washington, this twenty-sixth day of September, one thousand nine hundred fifty-one.

For the United States of America,
Dean ACHESON [SEAL].

For the Italian Republic,
Giuseppe PELLA [SEAL]

Annex 89

SENATE OF THE REPUBLIC, PARLIAMENTARY PROCEEDINGS, LEGISLATURE III, BILLS AND REPORTS — DOCUMENTS, 1958-1960, N. 931-A, PAGE 2, SENT TO THE OFFICE OF THE PRESIDENT ON 1[8] JULY 1960

[See Counter-Memorial of Italy, Annex 13]

Annex 90

CHAMBER OF DEPUTIES, PARLIAMENTARY PROCEEDINGS, LEGISLATURE III, DOCUMENTS — BILLS AND REPORTS, N. 537, PAGE 3, PRESENTED TO THE OFFICE OF THE PRESIDENT, 8 NOVEMBER 1958

[See Counter-Memorial of Italy, Annex 9]

Annex 91

UNITED STATES CODE, TITLE 5, SEC. 706 (2) (A) (1982)

[Not reproduced]

Annex 92

DELAWARE CODE ANNOTATED, TITLE 8, SECS. 271, 275 (1983 AND SUPP. 1986)

[Not reproduced]

Annex 93

CONNECTICUT GENERAL STATUTE, ANNOTATED, SECS. 33-372, 33-375 (WEST 1958 AND SUPP. 1986)

[Not reproduced]

Annex 94

DELAWARE CODE ANNOTATED, TITLE 10, SECS. 6101-6115 (1975)

[Not reproduced]

Annex 95

ITALIAN CRIMINAL CODE, SECS. 508, 614, 615, 633, 634

(Translation)

EXCERPTS FROM THE ITALIAN CRIMINAL CODE

("ABOUT VIOLATIONS IN PARTICULAR")

508. (Arbitrary Intrusion and Occupation of Agricultural or Industrial Facilities. Sabotage). Anyone who, for the sole purpose of impeding or disturbing the normal course of work, invades or occupies someone else's agricultural or industrial premises or avails himself of someone else's machines, materials, equipment or instruments designed for agricultural or industrial production, will be punished by incarceration of up to three years and a fine of not less than one thousand lire (now not less than eight thousand lire).

The penalty will be between six months and four years and a fine of not less than five thousand lire (now not less than 40,000 lire) if the act does not constitute a more serious offence or crime involving damage to buildings used for agricultural or industrial operations, or other property referred to in the preceding provisions (Arts. 510-512).

Article 40 of the Constitution recognizes the right to strike without, however, diminishing the validity of the provisions governing violations which, committed during a strike, encroach on other rights of freedom and property. It follows that the provisions of Article 508, designed to guarantee the freedom to work, are perfectly consistent with the new constitutional principles.

The provisions relating to the trespassing of a residence apply, rather than those covering arbitrary intrusion in the buildings of others or seizure of an industrial facility, whenever someone enters or stays in an industrial facility, against the will of the person entitled to deny such admittance, not for the purpose of deriving gains from the intrusion or seizure or of impeding the normal course of work but for affirming and obtaining recognition of his own right of union representation.

614. (Trespassing). Anyone who enters the residence or private abode or property of others, against the express or tacit will or approval of the person who has the right to deny admittance, or whoever enters by stealth or deceit, is punished by incarceration of up to three years.

Article 14 of the Constitution stipulates:

> The domicile (home) is inviolable.
>
> Inspection, search or sequestration are not permissible except in cases and in the form determined by the law in conformance with the guarantees established for the protection of personal freedom. Controls and inspections for reasons of public health and safety or for economic and fiscal purposes are governed by special laws.
>
> A private residence is also a place in which the private person and his industrial co-workers or employees perform their work . . . The industrial facility (Cass. 23 March 1953, Belloni, etc. Also cited in *Giust. Pen.* 1953, II, 878, note by Battaglini, 14 July 1953, Reggiani, *ibid.*, 1954, II, 204. Versus: Terni Court 3 May 1954, Franchi *et al.*, *ibid.*, 1954, II, 831, note C. Testi).

615. (Trespassing by a public official). A public official (Art. 357) who, in abusing the authority inherent in his functions, enters or stays in places indicated in the preceding article, is punished by incarceration of between one and five years.

633. (Intrusion in buildings or land). Anyone who arbitrarily intrudes in buildings or land owned by others, public or private, for the purpose of occupying the same or otherwise deriving gains therefrom, will be punished — if sued by the owner (Art. 120; c.p.p., Art. 9) — by incarceration of up to two years or with a fine from one thousand to ten thousand lire (now 8,000 to 80,000 lire).

The penalty applies jointly, with appropriate court action, if the act is committed by more than five persons of which at least one is visibly armed, or by more than ten persons even if unarmed (Art. 649).

634. (Violent disturbance of real property). Anyone who, outside of cases as outlined in the preceding article, disturbs the peace on or in real property of others, committing or threatening personal harm (violence), will be punished by incarceration of up to two years and a fine of between one thousand and three thousand lire (now 8,000 to 24,000 lire).

The act is considered as committed with violence or force or threat of violence when perpetrated by more than ten persons.

Annex 96

TABLE OF UNITED STATES PRIME RATES COVERING THE PERIOD FROM JANUARY 1964 TO MARCH 1987

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